Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1301

DELAWARE TRIBAL BUSINESS COMMITTEE, *et al.*, *Appellants*,
v.
WANDA JUNE WEEKS, *Appellee*.

No. 75-1335

ABSENTEE DELAWARE TRIBE OF OKLAHOMA BUSINESS COMMITTEE, *et al.*, *Appellants*,
v.
WANDA JUNE WEEKS, *et al.*, *Appellees*.

No. 75-1495

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR, *et al.*, *Appellants*,
v.
WANDA JUNE WEEKS, *et al.*, *Appellees*.

Appeals from the United States District Court
For The Western District of Oklahoma

No. 75-1301 Filed March 12, 1976
No. 75-1335 Filed March 16, 1976
No. 75-1495 Filed April 15, 1976
Probable Jurisdiction Noted June 14, 1976

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I. CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

8-28-73—Filed Complaint.

8-28-73—Filed Notice of Requirement of 3-Judge Dist. Ct.

9-7-73—Filed Order that Ct. be constitute of William J. Holloway, Jr., Frederick A. Daugherty, & Luther B. Eubanks (David T. Lewis, Chief Judge, 10th CCofA).

11-16-73—Filed Delaware Tribal Bus.', Townsend, Young, Crow, Secondine, & Scott's Ans.—w/s.

12-17-73—Filed dfts USA's, Morton's, Dela. Tribe's, Church's, Murray's, & Rose' Answer—w/s.

1-25-74—Filed plf's Amendment to Complaint—w/s LEAVE GRANTED TO FILE (Eubanks).

1-29-74—PRETRIAL, Feb. 28, 11:30 a.m. (Eubanks).

2-11-74—Filed plf's Verified Mtn for Order Directing That This Action Proceed as a Class Action—w/s.

3-13-74—Ent Further Pretrial (Eubanks) zmc.

3-13-74—Filed Pretrial Order (Eubanks).

3-21-74—Filed Prel. Inj.; dft Morton, Sec. of Int., & his delegates, etc., who receive actual notice hereof are enj'd, pdg final determ. of action, from releasing or distributing, etc., any of funds held or controlled by said dft, et al., appropriated by Congress to satisfy judgs in Indian Claims Commission Dkt 337, 72, & 298, save sum of $28,000 thereof which is excepted herefrom so that such funds may be applied as herein above set forth; nothing herein shall be construed to order or direct, said dft to make aforementioned applications or expenditures of said $28,000 or any part thereof (Eubanks).

4-9-74—Filed dfts' Mtn to Dism (USA's, et al.).

4-16-74—Filed plf's Mtn for S. J.

4-22-74—Filed Order consolidating Case No. 74-368-D with Case No. 73-586-E for joint hearing or trial pursuant to Rule 42(a) FRCiv.P (Daugherty) copies to cnsl and judges—ve.

4-23-74—Filed dfts Delaware Tribal Bus. Comm., Townsend, Young, Crow, Secondine, & Scott's Mtn to Dism.

5-20-74—Ent Hrg on various motions; arguments are heard; Ct takes mtns to dismiss & re jurisdiction under advisement (Holloway, Daugherty, Eubanks) —zmc.

11-1-74—Filed and entered Order—THAT dft U.S.' mtn to dism to sust'd.; pdg to dism filed by dft Morton & all dfts other than U.S. are denied; plf's pdg mtn for s.j., dft Delaware Tribal Bus. Com.'s & dfts other than U.S. & Morton mtn for partial s.j. overruled; Ct *finds* that plf class consisting • • • are so numerous that joinder of all members is impracticable • • • & *finds* that action may proceed as class action on behalf of plf class & against dft classes; ordered that there be indiv. notice by cert mail to all members of the Ks. Delaware class who can be identified, to be mailed w/in 30 days hereafter, advising that suits are being maintained, etc., that judg. will be binding on all members & any member may ent sep. appearance w/in 45 days hereafter; cnsl directed to confer promptly re things herein set out and, if any dispute, are to apply to Judge Daugherty for nec. orders w/in 15 days hereof; that notice to dft classes, Cherokee Delawares & Absentee Delawares be given w/in 30 days hereof by publ. in tribal bus. ltr or paper or newspaper of gen. circulation in accord. herewith as more fully set out and cnsl are to confer w/view to things herein set out w/same instrs to apply to Judge Daugherty if nec. as set out above; hrg will be had soon as poss. after all above has been performed (Holloway, Daugherty, & Eubanks) (COB #105)

(Clerk) (copies w/o judg. stamp to parties & 3 judges —wwm).

11-4-74—Filed and entered Amendment to Order—THAT order of 11-1-74 is amended to provide that cost of notice by cert mail to plf classes & by publ. to dft classes shall be borne by plf; prior to such notice, proposed form & manner shall be submitted to Judge Daugherty for approval • • • (Holloway, Daugherty, & Eubanks) (COB #105) (copies to parties—w/o judg.) ent'd stamp—zmc

11-18-74—Filed Order Approving Forms of Class Action Notice and Procedures for Giving Notice w/3 attachments (ALL SIGNED BY Judge Daugherty).

3-12-75—Filed Order permitting dfts, Delaware Tribal Bus. Comm, Townsend, Young, Crow, Secondine & Scott to file an amendment to their pldgs. (Eubanks) (copies mld.) zmc.

3-12-75—Filed dfts' amended answer—ws.

5-27-75—Ent Trial on Merits: "obj. Rothbaum to be taken up later." Plfs present evid. (exhs.); dfts' mtn to dism overruled & they present evid. (exhs.); rebuttal & surrebuttal had; cnsl. to submit FofF & CofL simul. w/in 20 days. (Daugherty & Holloway & Eubanks) ve.

12-18-75—Filed Memorandum Opinion (Daugherty) (COB #111) (Holloway & Eubanks joining, and Daugherty concurs in part & dissents in part).

12-18-75—Filed and ENTERED Judgment.

1-16-76, 10:15 A.M.—Filed Absentee Delaware Class' Notice of Appeal to the Supreme Ct of the U.S.—ws.

1-16-76, 2:15 P.M.—Filed dfts Delaware Tribal Business Committee, Townsend, Young, Crow, Secondine, Scott & intv. Delaware Tribe of Indians' Notice of Appeal—ws.

1-16-76, 2:30 P.M.—Filed plfs Weeks, Frazier & Rattler's Notice of Appeal—ws.

1-16-76, 2:40 P.M.—Filed dfts Stanley K. Hathaway (now Thomas J. Kleppe), indiv. & as Sec. of the Inter. of the USA's Notice of Appeal—ws.

II. RELEVANT PLEADINGS

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

WANDA JUNE WEEKS, *Plaintiff*,

v.

UNITED STATES OF AMERICA; ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR OF THE UNITED STATES OF AMERICA AND TRUSTEE FOR THE DELAWARE INDIAN PEOPLE; THE DELAWARE TRIBAL BUSINESS COMMITTEE; THE ABSENTEE DELAWARE TRIBE OF OKLAHOMA BUSINESS COMMITTEE; BRUCE MILLER TOWNSEND; NATHAN H. YOUNG; MARY TOWNSEND CROW; HENRY A. SECONDINE; Y. A. SCOTT; ARTHUR L. THOMAS; ALENE MARTINEZ; MYRTLE HOLDER; TOMMY HOLDER; LAWRENCE SNAKE; CHARLES TAYLOR; CLIO CHURCH; MABEL MURRAY, and GRACE SPOONER ROSE, *Defendants*.

Civ-73-586-E

Filed August 28, 1973.

Complaint

1. The Plaintiff is a citizen and resident of the United States and of Oklahoma and is a lineal descendant of Annie Grinter, deceased, a full-blood Delaware Indian who was a resident on the Delaware Indian lands in Kansas in the years 1854 to 1867.

2. The Delaware Tribal Business Committee is a group composed of the Defendants, Bruce Miller Townsend, Nathan H. Young, Mary Townsend Crow, Henry A. Secondine and Y. A. Scott, designated and elected by some persons of Delaware Indian descent to handle business matters relating to the affairs of Delaware Indians and especially with the relations of Delaware Indians with the Government of the United States. Each of the members of

such Business Committee is a Delaware Indian and they are each a representative of a sub-class hereinafter designated the "Cherokee-Delawares."

3. The Absentee Delaware Tribe of Oklahoma Business Committee is a group composed of the Defendants, Arthur L. Thomas, Alene Martinez, Myrtle Holder, Tommy Holder, Lawrence Snake and Charles Taylor, designated and elected by some persons of Delaware Indian descent to handle business matters relating to the affairs of Delaware Indians and especially regarding the relations of Delaware Indians with the Government of the United States. Each of the members of such Business Committee is a Delaware Indian and they are each representatives of a sub-class hereinafter designated the "Absentee Delawares."

4. The Defendants, Clio Church, Mabel Murray and Grace Spooner Rose, are Delaware Indians designated by some persons of Delaware Indian descent to handle business matters relating to the affairs of Delaware Indians and especially regarding the relations of Delaware Indians with the Government of the United States. Such Defendants are each representatives of a sub-class hereinafter designated the "Munsee Delawares."

5. The Plaintiff has been designated by some persons of Delaware Indian descent to handle their business matters relating to the affairs of Delaware Indians with the Government of the United States. She is representative of a sub-class hereinafter designated the "Kansas Delawares."

6. Each of the above named sub-classes are members of a class of persons who are descendants of persons of Delaware Indian blood who, in the years 1854 through 1858, lived on lands in the State of Kansas ceded to the Delaware Indians by the Government of the United States by the Treaty of 1829. Each member of the sub-classes Cherokee Delawares, Kansas Delawares and Absentee Dela-

wares are descendants of persons whose names appeared on the census rolls of the Delaware Nation established to the satisfaction of the Secretary of the Interior pursuant to the Treaty of October 3, 1818.

7. Census rolls of the Munsee Delawares exist through which it is possible to determine the present members of such sub-class, but the Munsee Delawares were separated from the main body of Delaware Indians in 1818 and their names were not included in the census rolls of 1818 although they were and are members of the Delaware Indian people and their ancestors were members of the Delaware Nation in 1818 entitled to be included on such census rolls.

8. The Delaware Indians are descendants of former tribal Indians but there is not now nor has there been for over one hundred years a Delaware Tribe or official group representative of all Delaware Indians. The Kansas Delawares were required by the Government of the United States by the Treaty of 1866 either to resign from the Tribe and become United States citizens or to move from the Delaware lands in Kansas to Indian Territory and to join the Cherokee Nation. The Kansas Delawares are those persons who elected to remain in Kansas in 1866 and to continue to live on designated and allotted lands. The Cherokee Delawares are those persons who elected to move to Indian Territory pursuant to the Treaty of 1866, to give up all tribal identification and participation as Delaware Indians, and to become citizens of the Cherokee Nation. They thereafter were Delaware Indians by blood only. The Absentee Delawares are persons who removed voluntarily from the Delaware Indians lands in Kansas in 1858 and in 1874 joined with the Caddo Indians in Indian Territory. They gave up all tribal identification and participation as Delaware Indians and became members of the Caddo Indian tribe. They thereafter were Delaware Indians by blood only. The Munsee Delawares lived on the Delaware Indian lands in Kansas in 1854 through 1858, but they

dispersed, became scattered and they gave up all tribal identification and participation as Delaware Indians and are Delaware Indians by blood only. The sub-classes together represent those Delaware Indians whose rights were affected by the treaties with the United States with the Delaware Nation in 1854, 1860, 1861 and 1866.

9. There are approximately 250 living members of the sub-class Munsee Delawares, 300 members of the sub-class Kansas Delawares, 1,400 members of the sub-class Absentee Delawares, and 11,000 members of the Cherokee Delawares. The members of each sub-class have no interest antagonistic to the other members of such sub-class and will adequately represent the sub-class of which they are members. A common relief is sought for each member of the Kansas Delawares. Because the members of the sub-classes are so numerous, because they are widely scattered and distributed throughout the United States, and because it would be prohibitively expensive and burdensome to the parties and to the Court to litigate their claims individually, a class action is superior to all other available methods for a fair and efficient adjudication of the controversy herein and is appropriate under Rule 23 of the Federal Rules of Civil Procedure.

10. This action involves a construction of two judgments entered by the Indian Claims Commission, the constitutionality of two statutes of the United States, and questions whether the Plaintiff and the members of the sub-class of which she is a member have been deprived of their rights under the Fifth Amendment to the Constitution of the United States. The Plaintiff herein seeks declaratory relief, and many federal questions are involved.

11. The amount in controversy, exclusive of interest and costs, exceeds $12,500,000.00; the amount in controversy for each member of the sub-class Kansas Delawares, of which the Plaintiff is a member, exceeds, exclusive of interest and costs, the sum of $10,000.00.

12. The United States of America is a real party in interest, it being the party against which the judgments hereinafter described were rendered and the party directly obligated to pay to the Kansas Delawares all or an aliquot part of such judgments.

13. Rogers C. B. Morton, as Secretary of the Interior of the United States, is a party designated by the laws of the United States to determine the names of those persons entitled to share in the benefits of the judgments against the United States hereinafter described.

14. This Court has jurisdiction of this action under Article III, Section 2 of the Constitution of the United States, under 28 U.S.C. § 1331 and § 1362, and 5 U.S.C. § 701 et seq. This cause is an appropriate action for the convening of a three judge court under 28 U.S.C. § 2282 and for the issuance of a temporary restraining order under 28 U.S.C. § 2284.

15. On August 5, 1963, in Docket No. 337, the Indian Claims Commission awarded a judgment in the amount of $1,627,244.64 to the "Delaware Nation of Indians as constituted at the time of the Treaty of October 3, 1818." On October 7, 1964, the Congress of the United States appropriated funds to pay such judgment and the Congress on September 21, 1968 in statutes appearing at 25 U.S.C. § 1181-86 provided the manner in which the judgment funds were to be distributed. Pursuant to such statutes claims were made by persons who claimed to be entitled to share therein and distribution has been made of some of such funds to members of the sub-classes Kansas Delawares, Absentee Delawares and Cherokee Delawares. No payment was made to members of the sub-class Munsee Delawares pending a determination of the existing controversy as to whether they are entitled to share in such judgment. Such controversy exists and is unresolved. The Plaintiff believes, and so alleges, that the Secretary of the Interior holds

such undistributed funds in trust for the parties entitled thereto.

16. On September 10, 1969, in Docket Nos. 72 and 298 the Indian Claims Commission awarded judgment in the amount of $9,194,364.99 to the Delaware Indian people. Such judgment arose out of violations of the treaty obligations of the United States to the Delaware Indians residing on the Delaware Indian lands in Kansas which were taken by the United States by the Treaty of 1854 under a promise that such lands would be sold for the benefit of the Delaware Indians in a manner calculated to obtain a reasonable price. Such lands were sold but not in the manner provided by such Treaty, and the Delaware Indians whose rights were affected by the Treaty of 1854 were damaged. The proceeds which were received from such sale were used for the benefit of sub-classes Kansas Delawares, Absentee Delawares and Cherokee Delawares, but were not shared by the Munsee Delawares.

17. Upon the entry of said jugment in Docket Nos. 72 and 298 those persons who were members of the class comprising the Delaware people became vested with an interest therein which could not be taken without due process of law and without just compensation.

18. On December 26, 1969, Congress appropriated funds to pay the judgment entered in said Docket Nos. 72 and 298, such funds to be distributed in the manner to be determined by appropriate legislation.

19. On October 3, 1972, the Congress enacted Public Law 92-456 (86 Stat. 762), 25 U.S.C. §§ 1291-1297 in which the Secretary of the Interior was directed to distribute the funds appropriated to pay the judgments in said Docket Nos. 72 and 298 in a manner calculated to exclude the Kansas Delawares and the Munsee Delawares, all of whom were members of the Delaware Nation, were Delaware people, and who were beneficiaries of such judgments as

intended by the Indian Claims Commission. The method for determining the persons entitled to share in such judgment was arbitrary, capricious and violative of the rights of the members of the Kansas Delawares and Munsee Delawares to due process of law, and to not have their valuable rights taken without just compensation as protected by the Fifth Amendment to the United States Constitution. Such act of Congress was and is unconstitutional unless construed to enable the Secretary of the Interior to include in the persons entitled to share in such judgment the Kansas Delawares and the Munsee Delawares.

20. The Kansas Delawares and Munsee Delawares are the only Delaware Indians who have not given up their identity as Delaware Indians by joining other tribes of Indians and by sharing in benefits of treaties and judgments as members of the tribes with which they joined. If the benefits of said judgments 72 and 298 are to be distributed only to those persons who have remained members of the Delaware Nation by not voluntarily joining other tribes of Indians, then the Kansas Delawares and the Munsee Delawares should be the only beneficiaries of said judgment Nos. 72 and 298. If the Munsee Delawares are to be excluded because they were not on the rolls of those Delaware Indians who shared in the trust fund created by virtue of the illegal sales of Delaware Indian lands pursuant to the Treaty of 1854 out of which judgment arose, then the Kansas Delawares are the only persons entitled to the benefits of judgments No. 72 and 298, in which case the Plaintiff's share and the share of each member of the Kansas Delawares is approximately $38,000.00. If the Kansas Delawares and the Munsee Delawares are the only persons entitled to the benefits of such judgments No. 72 and 298, the share of each beneficiary is approximately $22,-700.00. If all of the members of the sub-class described herein share in such judgments No. 72 and 298, the share of each beneficiary is approximately $1,000.00. An actual controversy exists as to the identity of the parties entitled

to share in the benefits of the judgments entered in Docket No. 337, 72 and 298 and the amounts of such shares.

21. Pursuant to said law enacted to determine the manner in which the benefits of such judgments were and are to be distributed, members of each sub-class duly filed claims with the Secretary of the Interior. The claims of the Munsee Delawares were denied as to the judgment entered in Docket No. 337. The claims of the Kansas Delawares and the Munsee Delawares were denied as to Docket Nos. 72 and 298. Both of such judgments were identical as to the intended beneficiaries thereof and the acceptance of the members of the Kansas Delawares as members of the Delaware Nation for the purpose of Docket No. 337 was an acknowledgment by the United States that the Kansas Delawares were members of the Delaware Indian people. The exclusion of such persons in the determination of the beneficiaries of the judgment in Docket Nos. 72 and 298 was an unconstitutional and arbitrary deprivation of the valuable property rights of the Kansas Delawares entitling them to the relief sought herein. The Absentee Delawares and the Cherokee Delawares contend that the Kansas Delawares were entitled to share in the judgment at Docket No. 337, but contend that they are not entitled to share in judgment at Docket Nos. 72 and 298. The Absentee Delawares and the Cherokee Delawares contend that the Munsee Delawares are not entitled to share in either judgment. The Kansas Delawares contend that they are entitled to share in judgment Docket No. 337 and have received some funds from the distribution thereof. They also contend that they are beneficiaries of all or a part of the funds appropriated to pay the judgment entered in Docket No. 72 and 298, depending on whether the Court determines that the beneficiaries thereof include former Delaware Indians who joined other tribes. An actual controversy exists between the Plaintiff and the members of the class she represents and the other sub-classes represented herein and against the United States of America and the Secretary of the

Interior. All parties have exhausted their appeals and administrative remedies and they have no adequate remedy at law.

22. The Absentee Delaware Tribe of Oklahoma Business Committee and the members thereof and the Delaware Tribal Business Committee and the members thereof were permitted to and they did represent the Delaware Indian people in pursuing the claims culminating in the judgments referred to herein. They and their duly appointed counsel have been and are now in a fiduciary relationship with the members of the Delaware Indian people. They are presently pursuing other and further claims on behalf of the Delaware Indian people. Such Business Committees and the members thereof have lobbied Congress to enact the legislation mentioned herein by which they have excluded or attempted to exclude parties whom they have represented from the benefits due to them under the actions taken. The Secretary of the Interior has at all times known of the breach of fiduciary relationship involved and has and will, unless enjoined by this Court, make or cause to be made distributions of funds in such manner as to deprive the Plaintiff and the class she represents of their constitutional rights.

23. The attempt by the United States to make arbitrary classification of Delaware Indians for the purpose of distributing benefits of judgments entered under actions taken on behalf of all Delaware Indians under the Indian Claims Commission Act denies equal protection of the laws and thus deprives the Plaintiff and the class represented by her of due process of law in violation of the Fifth Amendment to the Constitution of the United States. Public Law 92-456 attempts to benefit only those Delaware Indians whose names or their ancestors' names appear on the Cherokee Delaware census rolls of 1906 and the Absentee Delaware census rolls of 1940, to the exclusion of the Kansas Delawares whose land was misappropriated

and unlawfully sold by the United States in 1858 in breach of the Treaty of 1854, which breaches of treaty obligations were the bases for the entering of the judgments in which they seek to participate. Public Law 92-456 (25 U.S.C. §§ 1291-1297) is unconstitutional and void unless it is construed to permit the Secretary of the Interior to determine the members of the Delaware Indian peoples who are entitled to benefits in the judgment in Docket Nos. 72 and 298 without discrimination on any basis that is not arbitrary and discriminatory.

24. The funds duly appropriated by the Congress of the United States to pay the judgments in Docket Nos. 337, 72 and 298 will be unlawfully distributed in deprivation of the constitutional and property rights of the Plaintiff and the members of the Kansas Delawares unless this Court enters a restraining order pending the hearing of the right for a preliminary injunction and the Plaintiff and the class she represents will suffer irreparable harm. Upon hearing, the Court should enter a preliminary injunction against such distribution pending a hearing of the merits of this cause.

WHEREFORE, THE PLAINTIFF PRAYS:

1. That a Restraining Order and Preliminary Injunction issue against all Defendants from distributing any funds or receiving any funds appropriated by the Congress for the payment of the judgments entered in Indian Claims Commission Dockets Nos. 72 and 298 and any funds remaining undistributed to pay the judgment entered in Docket No. 337 until the cause alleged herein is determined.

2. That the Court either construe Public Law 92-456 as permitting and directing the Secretary of the Interior to provide a manner of distribution of the funds appropriated to pay the herein mentioned in judgment without unlawful discrimination between persons entitled to share in the proceeds of such judgment or, in the alternative, that if

such law cannot be properly so construed, that such law be declared unconstitutional and void. In such latter case, the Court should order the Secretary of the Interior to hold such funds pending the enactment of legislation to provide for a legal and proper distribution thereof and the establishment of due process for the purposes of allowing the Delaware Indians entitled to share in such judgment to make due claim therefor.

3. The Court should restrain and enjoin the Absentee Delaware Tribe of Oklahoma Business Committee and the members thereof and the Delaware Tribal Business Committee and the members thereof from representing in any forum or in any hearings before any governmental bodies or agencies the several rights of the Delaware Indians comprising the Delaware Nation of Indians or from in any other manner breaching their fiduciary duties to represent all Delaware Indians without discrimination.

4. Determining any entitlement to counsel fees and costs within the jurisdiction of this Court in relation to this matter.

5. For such other relief as is just and equitable.

/s/ WANDA JUNE WEEKS
Wanda June Weeks
3200 Southwest 42nd Street
Oklahoma City, Oklahoma 73119
Telephone No.: (405) 681-3468
Attorney Pro-Se

/s/ DELMAR L. STAGNER
DELMAR L. STAGNER and STEPHEN P. FRIOT
Suite 310—The Midland Center
134 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102
Telephone No.: (405) 235-1538
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

(Title Omitted in Printing)

Answer

(Filed December 17, 1973)

COMES Now the defendants, United States of America; Rogers C. B. Morton, Secretary of the Interior of the United States of America; Delaware Tribe of Western Oklahoma, designated by Plaintiff in the Complaint as The Absentee Delaware Tribe of Oklahoma Business Committee; Clio Church, Mabel Murray, and Grace Spooner Rose, by their attorneys, William R. Burkett, United States Attorney for the Western District of Oklahoma and Givens L. Adams, Assistant United States Attorney, and for their answer to the complaint of the plaintiff, deny generally and specifically each and every allegation therein contained, except such as may be hereinafter specifically admitted.

For further answer and defense, defendants allege and state:

1. Paragraph One (1) is admitted.

2. The allegations of paragraph Two (2) are denied for the reason that said defendants have insufficient knowledge to admit or deny same.

3. Paragraph Three (3) is denied except that while sometimes referred to as The Absentee Delaware Tribe, its official name is the Delaware Tribe of Western Oklahoma, and its governing body is designated the Executive Committee rather than Business Committee.

4. It is expressly denied that the persons named in paragraph Four (4) are Delaware Indians. The defendants

lack sufficient information to admit or deny whether defendants Clio Church, Mabel Murray and Grace Spooner have the authority to act for persons of Delaware descent.

5. Defendants lack sufficient information to admit or deny the allegations of paragraph Five (5) of plaintiff's complaint.

6. Paragraph Six (6) is denied for the reason that the sub-classes listed by the plaintiff are not so specific that said defendants can admit that all persons within them meet the conditions specified by the plaintiff in this paragraph.

7. Paragraph Seven (7) is denied.

8. The second and third sentences of paragraph Eight (8) are admitted. The fourth sentence of paragraph Eight (8) is admitted to the extent that the Kansas Delawares did elect to move to Indian Territory and join the Cherokee Nation. It is also admitted that the Absentee Delawares were moved from Kansas and voluntarily joined with the Caddo Indians in Indian Territory. All other allegations in paragraph Eight (8) are denied.

9. Paragraph Nine (9) is denied for the reason that said defendants have insufficient knowledge to admit or deny same.

10. Paragraph Ten (10) constitutes conclusions of law which said defendants cannot admit or deny.

11. The allegations in paragraph Eleven (11) are denied. The said defendants are informed and therefore allege that the share of each participant in the judgment fund will not exceed $10,000.00.

12. The allegations in paragraph Twelve (12) are a conclusion of law which said defendants cannot answer and are therefore denied.

13. Paragraph Thirteen (13) is admitted.

14. The allegations in paragraph Fourteen (14) are conclusions of law and the said defendants cannot admit or deny the same.

15. The allegations in paragraph Fifteen (15) are admitted.

16. The allegations in paragraph Sixteen (16) are denied. The said defendants are informed and therfore allege that the award in Docket No.'s 72 and 298 pursuant to the provisions of the Treaty of 1854 with the Delawares was for $9,168,171.63.

17. Paragraph Seventeen (17) is denied.

18. The allegations of paragraph Eighteen (18) are admitted.

19. It is admitted that PL 92-456 limits payment of the tribal judgment in Docket No.'s 72 and 298 to persons who meet the requirements set forth in 25 U.S.C. § 1292. All other allegations of the paragraph numbered Nineteen (19) are denied.

20. The allegations in paragraph Twenty (20) are denied for the reason that it is Congress rather than any Indian Claims Commission which determines whether and, if so, how a tribal judgment fund shall be used or distributed.

21. The allegations contained in sentences 1, 2, 3, 6, 7, 8, 9 and 12 of Paragraph Twenty-one (21) are admitted, except it is denied that all members of each sub-class duly filed claims with the Secretary of the Interior. It is also admitted that the plaintiff has exhausted her administrative remedies but it is expressly denied that all members of the alleged sub-classes have exhausted their administrative remedies. The allegations in sentences 4, 5, 10 and 11 are conclusions of law which defendants cannot answer and they are therefore denied.

22. Paragraph Twenty-two (22) is denied.

23. It is admitted that PL 92-456 provides for the distribution of judgment funds awarded in Docket No.'s 72 and 298 as provided in 25 U.S.C. § 1292. All other allegations in paragraph Twenty-three (23) are denied.

24. The allegations in paragraph Twenty-four (24) are conclusions of law which we cannot answer and are therefore denied.

WILLIAM R. BURKETT
United States Attorney

/s/ GIVENS L. ADAMS
Givens L. Adams
Assistant United States Attorney

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

(Title omitted in printing)

Amendment To Complaint

(Filed January 25, 1974)

The Plaintiff amends her Complaint in this action as follows:

1. Plaintiff deletes from her Complaint all allegations that the defendants, Murray, Church and Rose, and the class of which they are a part, are claiming to be members, or are members, of the Delaware Nation entitled to share in the proceeds of the judgments in Indian Claims Commission Dockets #337, #72 and #298.

2. When this action was filed there was pending in the United States District Court for the District of Kansas Civil Action No. KC-3696 wherein the defendants, Murray, Church and Rose, were claiming that they and other members of a group of Indians referred to as the Munsees were historically a part of the Delaware Nation and were persons entitled to be included in the benefits of the judgments in Indian Claims Commission Dockets #337, #72 and #298. The Court had entered a temporary restraining order against Rogers C. B. Morton, Secretary of the Interior, restraining him and his agents from distributing the remaining judgment funds for such docket numbers until the Plaintiffs' Complaint for a preliminary and permanent injunctive relief could be heard and determined. On August 16, 1973, such Court entered a subsequent Temporary Restraining Order granting injunctive relief pending hearing of the cause. This order is now and was in force and effect on the date this action was filed. A copy of such order is attached hereto as Exhibit "A."

3. On January 10, 1974, the defendants, Murray, Church and Rose, reported to the Three-Judge Court appointed to hear case No. Civil KC-3696 in Kansas that previously undiscovered historical documents had been uncovered which conclusively showed that the group of Indians called the Munsees had severed all relationships with the Delaware Nation of Indians in 1826 and did not thereafter have any continuing political, cultural or economic ties with the Delaware Nation; that at the times of the wrongs which were the bases for the judgments in Dockets #337, #72 and #298 the Munsee Indians were not a part of the Delaware Nation and admitted that the Munsee Indians were not entitled to share in the benefits of the judgments. A Motion To Dismiss, based upon such newly discovered evidence, was filed and is now under advisement pending a determination as to whether the Kansas action is a class action and whether notification must be given to other members of the class in order for the Court to be able to dismiss the cause.

4. The Plaintiff in this action has no knowledge of any other persons of the Munsee Class of Delaware Indians who make any claim that such class is entitled to share in the benefits of the judgments in Dockets #337, #72 and #298 and, therefore, amends her Complaint accordingly.

5. Upon the dismissal of said case No. Civil KC-3696, the Temporary Restraining Order, Exhibit "A", will be dissolved. The Plaintiff believes, and so alleges, that upon the dissolution of such restraining order the funds will be released and will be paid to persons not entitled thereto to the prejudice of the Plaintiff and the class of which she is a representative.

6. The Delaware Nation of Indians and the Cherokee Nation of Indians entered into an agreement on the 8th day of April, 1867, wherein it was agreed that the Cherokee Nation would accept as citizens those members of the Delaware Tribe of Indians who desired to move from Kansas to the Cherokee Nation lands pursuant to the Treaty of 1866 with the United States. The terms and payments as conditions to such admission to citizenship to the Cherokee Nation were set out in such agreement and were met by all parties. Among other benefits as citizens of the Cherokee Nation, the entering Delaware Indians were each entitled to and did receive 160 acres of land in the Cherokee Nation for life. Such land was not granted to such Delaware Indians in fee and their children received no interest therein by inheritance. The said agreement expressly provided that the children of such entering Delawares "shall in all respects be regarded as native Cherokees." As such native Cherokee Indians, such children were citizens of the Cherokee Nation, entitled to all of the benefits as such citizens, and were never Delaware Indians. The said agreement was approved by the President of the United States.

7. The Constitution of the Delaware Nation was amended to incorporate the provisions of the agreement between the Delaware Nation and the Cherokee Nation, and all conditions of such agreement were met, including payments from the Delaware Tribal Fund to the Cherokee Nation for the benefit of the Delaware Indians who joined the Cherokee Nation.

8. At the time of the entry of the judgments in said Dockets #337, #72 and #298, all of the Kansas Delawares who entered the Cherokee Nation as citizens pursuant to the agreement of 1867 were deceased. The present class designated Cherokee Delawares contains only persons and their descendants who were by such agreement native Cherokee Indians and are not Delaware Indians, and the Plaintiff believes, and so alleges, that such persons have received all of the benefits of other Cherokee Indians, including allotments of Cherokee Nation lands upon the dissolution of such Nation. Such Cherokee Delawares were never members of the Delaware Nation and are not persons

entitled to benefits of the judgments in said Dockets #337, #72 and #298. Their ancestors were Delaware Indians who were residents on the tribal lands in Kansas when the United States illegally and improperly sold such lands pursuant to the Treaty of 1854, but such ancestors, by virtue of the agreement of 1867, agreed that their children would not thereafter be Delaware Indians.

9. The census roll of 1906, designated by Congress in Public Law 92-456 (25 U.S.C. § 1291-1297) as the basis for payment of funds from said Dockets # 72 and # 298, did not purport to be and was not a roll of persons then members of the Delaware Nation, but related only to members of the Delaware Indian tribe who removed to the Cherokee Nation pursuant to the agreement of 1867 and their children. Such roll included persons who were never Delaware Indians but who were native Cherokee Indians and, as such, were not persons entitled to the benefits of the judgments in Dockets #337, #72 and #298.

10. Some payments have heretofore been made from the funds appropriated pursuant to Public Law 90-508 (25 U.S.C. § 1181-86), which law was, the Plaintiff asserts, unconstitutional. Such payments were made to Kansas Delawares, Absentee Delawares and Cherokee Delawares, and to the extent thereof the Plaintiff is without an adequate remedy. There remains undistributed approximately $500,000.00 which has been retained by the Secretary of the Interior pending litigation of the rights of the parties. The Plaintiff alleges that the Cherokee Delawares are not entitled to any share of the remainder of the funds from Docket #337, nor to any of the funds from Dockets #72 and #298. The claim of the Absentee Delawares, as set out in the Complaint, is disputed by the Plaintiff. Therefore, none of the funds can be paid out until a determination of the issues between the parties without irreparable harm.

WHEREFORE, the Plaintiff prays for a hearing on her application for a preliminary injunction and renews the prayer of her Complaint.

/s/ DELMAR L. STAGNER
DELMAR L. STAGNER and STEPHEN P. FRIOT
Suite 310—The Midland Center
134 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102
(405) 235-1538
Attorneys for Plaintiff

(Certificate of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

(Title omitted in printing)

Verified Motion of Plaintiff Wanda June Weeks for Order Directing That This Action Proceed as a Class Action

(Filed February 11, 1974)

Plaintiff Wanda June Weeks respectfully states:

I.

FACTS UNDER RULE 23(a).

1. FACTS UNDER RULE 23(a)(1). KANSAS DELAWARE CLASS: Plaintiff is a member and representative of the class of persons designated for convenience in the complaint as "Kansas Delawares". The Kansas Delaware class is composed solely of the lineal descendants of those persons who were entitled to and did, pursuant to Article 3 of the Treaty of July 4, 1866, elect to remain in Kansas, rather than emigrate to what is now eastern Oklahoma. A roll (herein referred to as "Pratt Roll") of these Delawares who so elected to remain in Kansas was contemporaneously prepared by John G. Pratt, U.S. Indian Agent for the Delaware Tribe of Indians. The class "Kansas Delaware" consists of the descendants of the persons named on the Pratt Roll. The Pratt Roll listed the following persons:

(1) Mary Jane Defries	
Minor Children:	William A. Defries
	Anna E. Defries
(2) Frances C. Grinter	
Minor Children:	Mary E. Grinter
	John W. Grinter
	Nannie Grinter
	Edward E. Grinter

(3) Annie Grinter	
Minor Children:	Martha Grinter
	Cunningham Grinter
(4) William Henry Grinter	
(5) Rosanna Grinter	
Minor Children:	Juliet Grinter
	Henrietta Grinter
	Maria Jane Grinter
	Sarah Frances Grinter
	Mary Bell Grinter
	James M. Grinter
	Elizabeth S. Grinter
	Flora Grinter
(6) Sally Honeywell	
Minor Children:	Eli M. Honeywell
	Susan T. Honeywell
	William Honeywell
	John Honeywell
(7) George O. Collins	
Minor Child:	Ida M. Collins
(8) Lewis Ketchum	
(9) Elizabeth Z. Ketchum	
Minor Children:	Mary L. Ketchum
	Jane Ketchum
	Barbara Ketchum
	Simon Ketchum
	Silas Ketchum
	Lucinda Ketchum
	Sollomon Ketchum
(10) John W. Ketchum	
(11) Mary E. Ketchum	
(12) Sarah A. Ketchum	

(13) Ellen Swisher
Minor Children: Mary P. Swisher
James Henry Swisher
John S. Swisher
Rosalie Swisher

(14) Melinda Wilcoxen
Minor Children: Lucinda Wilcoxen
Emmett Wilcoxen

(15) Betsey Zeigler
Minor Child: Charles Zeigler

(16) Logan Zeigler

(17) Sophia Zeigler
Minor Children: John Zeigler
Emily Zeigler

(18) George Zeigler
Minor Child: Racheal Zeigler

(19) Mary Tiblow Stevenson
Minor Child: Rosana Stevenson

(20) Mary Ann Tiblow
Minor Children: Virginia Tiblow
Francis Tiblow
Richard W. Tiblow
Charles Tiblow
Nancy Jane Tiblow

(21) Nannie M. Pratt
Minor Children: Laronia Pratt
Ella May Pratt
Ida Pratt

Plaintiff's class (Kansas Delaware) consists exclusively of the lineal descendants of the above-named individuals. There are more than three hundred descendants of Annie Grinter alone. Although Annie Grinter was relatively prolific (she had 12 children), there are probably approximately one thousand members of the Kansas Delaware

class. The Kansas Delaware class is therefore so numerous that joinder of all members is impracticable.

CHEROKEE DELAWARE CLASS: Defendants Bruce Miller Townsend, Nathan H. Young, Mary Townsend Crow, Henry A. Secondine and Y. A. Scott represent the class of persons designated for convenience in the complaint as "Cherokee Delawares." The Cherokee Delaware class is composed solely of the lineal descendants of those persons who, pursuant to Article 4 of the Treaty of July 4, 1866, emigrated to what is now eastern Oklahoma. There are approximately 6,500 members of the Cherokee Delaware class. The Cherokee Delaware class is therefore so numerous that joinder of all members is impracticable.

ABSENTEE DELAWARE CLASS: Defendants Arthur L. Thomas, Alene Martinez, Myrtle Holder, Tommy Holder, Lawrence Snake, and Charles Taylor are members of and represent the class of persons designated for convenience in the complaint as "Absentee Delawares." The Absentee Delaware class is composed entirely or almost entirely of the lineal descendants of the Delawares who split off from the main body of the Delaware people and joined with the Caddo Indians rather than migrating to Kansas with the main body of the Delaware people in the early 1830's. According to S. Rep. No. 1518, 90th Cong., 2d Session (1968) p. 12 and H. Rep. No. 1555, 90th Cong., 2d Session (1968), the Absentee Delaware class consists of approximately 750 to 800 persons. Other materials, most notably Volume I, Number I of the Delaware Newsletter, dated September 21, 1972, indicate that there are as many as 1,500 Absentee Delawares. The Absentee Delaware class is therefore so numerous that joinder of all members is impracticable.

MUNSEE DELAWARE CLASS: The complaint has been amended to eliminate the Munsee Delaware class from this section.

2. Facts Under Rule 23(a)(2). Common Questions of Law: The respective classes are at issue with one another on the question of the constitutionality of 25 U.S.C. §§ 1181-86 and 25 U.S.C. §§ 1291-97. These questions of law are common to each of the classes. A second common question of law is the issue of whether the Cherokee Delaware and Absentee Delaware classes have any entitlement at all to share in the judgment funds in question.

Common Questions of Fact: The respective classes are so defined that the facts material to the legal issues raised by the pleadings are common to all members within each class. Thus, the factual issues exist between the classes and not within the classes. The main factual controversy is raised by the failure by the Defendants to admit paragraphs six through nine of the complaint.

3. Facts Under Rule 23(a)(3). Claims of Plaintiff Wanda June Weeks as Member and Representative of Kansas Delaware Class. The claims of Plaintiff are based on the fact that she is a lineal descendant of a Delaware who elected to remain in Kansas, as shown by the Pratt Roll. Plaintiff asserts no rights that do not inure to her by virtue of being a lineal descendant of a Delaware whose name appears on the Pratt Roll. By representing the Kansas Delaware class as defined herein, she seeks to represent only those whose rights are similarly grounded.

Defenses of Defendants Townsend, Young, Crow, Secondine and Scott as Members of Cherokee Delaware Class: The above-named Defendants filed their Answer on November 16, 1973. Nothing in their Answer indicates that there are any dissimilar or inconsistent factual or legal defenses within the Cherokee Delaware class.

Defenses of Defendants Thomas, Martinez, M. Holder, T. Holder, Snake and Taylor as Members of Absentee Delaware Class: The above-named Defendants filed their Answer on December 17, 1973. Nothing in their Answer

indicates that there are any dissimilar or inconsistent factual or legal defenses within the Absentee Delaware class.

4. Facts Under Rule 23(a)(4). Plaintiff Wanda June Weeks: Plaintiff Weeks has been active among descendants of Annie Grinter for all of her adult life. She has of her own volition become knowledgeable as to the history of the Grinter family and of the Kansas Delawares in general. The Grinter family is a large segment of the Kansas Delaware class. As to all of the Indian Claims Commission judgments here in issue, it has been Plaintiff Weeks who has taken the lead in applying for participation and asserting her rights and the rights of those similarly situated. Plaintiff's efforts on behalf of herself and others similarly situated have included considerable historical research, both locally and in Washington, D.C. In addition, Plaintiff has engaged in correspondence and personal face to face discussions as to Kansas Delaware rights with numerous public officials. Consequently, Plaintiff has been looked to by Grinter descendants and by others in the Kansas Delaware class as being a person willing and able to see that the rights of the Kansas Delaware class are protected. The attorneys Plaintiff has selected will stand on their reputation as to their ability to properly represent Plaintiff's class.

Defendants Townsend, Young, Crow, Secondine and Scott: Each of the individually named "Cherokee Delaware" defendants has been active in promoting the interests of those in the "Cherokee Delaware" class. These persons are the elected representatives of the persons comprising the "Cherokee Delaware" class. Defendant Townsend is and has been a forceful and knowledgeable advocate of the rights of the class he represents.

Defendants Thomas, Martinez, M. Holder, T. Holder, Snake and Taylor: Each of the individually named Absentee Delaware defendants has been active in promoting

the interest of those in the Absentee Delaware class. They all have held office on the Executive Committee of the Delaware Tribe of Western Oklahoma (Absentee Delaware Tribe), and are ably represented by the Department of Justice.

II.

FACTS UNDER RULE 23(b).

This action is sought to be maintained as a class action under the provisions of Rule 23(b)(1) and (b)(2).

1. FACTS UNDER RULE 23(b)(1). Each class involved in this action is composed of many members, living in several judicial districts. The members of the Cherokee Delaware class reside largely in the Northern and Eastern Districts of Oklahoma. The members of the Absentee Delaware class reside largely in the Western District of Oklahoma. Since this action concerns rights in two common funds, there is, unless the class action device is employed, a risk of inconsistent or varying adjudication with respect to individuals in each class which would establish incompatible standards of conduct for the federal defendants. Also, since this action does involve two common funds, with the members of the respective classes sharing common factual backgrounds, adjudication with respect to individual members of each class would as a practical matter be dispositive of the interest of the other members.

2. FACTS UNDER RULE 23(b)(2). The Defendant Morton has refused to disburse judgment funds in Indian Claims Commission Docket Nos. 72 and 298 to the members of the Kansas Delaware class. In addition, the Defendant Morton is threatening to disburse a portion of the remaining funds in Indian Claims Commission Docket No. 337 to the members of the Cherokee Delaware and Absentee Delaware classes, in violation of the rights of the Plaintiff and the class she represents, as set forth in the Complaint

and in the amendment thereto. Defendant Morton has taken this action under color of 25 U.S.C. §§ 1181-86 and 1291-97. In the case of the judgment funds in Indian Claims Commission Docket Nos. 72 and 298, the Defendant Morton has refused to act on grounds generally applicable to Plaintiff's class, that ground being that his refusal to allow Plaintiff's class to participate in the judgment funds is mandated by 25 U.S.C. §§ 1291-97.

WHEREFORE, Plaintiff Wanda June Weeks respectfully submits this motion and the accompanying brief and prays that this Court enter its order directing that this action proceed as a class action under Rule 23 of the Federal Rules of Civil Procedure and that the classes be determined, defined and represented as set forth above.

/s/ Stephen P. Friot
DELMER L. STAGNER & STEPHEN P. FRIOT
Attorneys for Plaintiff
Wanda June Weeks

HALLEY, SPRADLING, STAGNER & ALPERN
Suite 310—The Midland Center
Oklahoma City, OK 73102
Phone: (405) 235-1538

(Verification and Certificate of Service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

(Title omitted in printing)

(Filed March 13, 1974)

Pre Trial Order

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, this cause was set down for pre-trial conference on February 28, 1974. The pre-trial conference was commenced on February 28, 1974 and completed on March 5, 1974. The following action was taken:

1. *Appearances.* Plaintiff Wanda June Weeks appeared at both sessions by her counsel of record, Delmer L. Stagner and Stephen P. Friot. In addition, Mr. Stagner announced that Henry B. Taliaferro, Esquire, of Casey, Lane and Mittendorf, 815 Connecticut Avenue, N.W., Washington, D.C. 20006 had become associated as co-counsel for Plaintiff. The Defendants United States of America, Rogers C. B. Morton, Delaware Tribe of Western Oklahoma (designated in the complaint as the Absentee Delaware Tribe of Oklahoma Business Committee), Arthur L. Thomas, Alene Martinez, Myrtle Holder, Tommy Holder, Lawrence Snake and Charles Taylor appeared at both sessions by William R. Burkett, United States Attorney, Givens L. Adams, Assistant United States Attorney, and by Duard R. Barnes, Assistant Solicitor for Indian Affairs, United States Department of the Interior. In addition, Mr. Snake appeared personally at the second session. The Defendants Delaware Tribal Business Committee, Bruce Miller Townsend, Nathan H. Young, Mary Townsend Crow, Henry A. Secondine and Y. A. Scott appeared at the first session by their counsel of record Bruce Miller Townsend and Clyde J. Watts and at the second session by Mr. Townsend, Mr. Watts having been absent with

leave of the Court. In addition, Mr. Secondine appeared personally at the second session. No appearance was made for the Defendants Clio Church, Mabel Murray and Grace Spooner Rose, they and their purported class having been excluded from this action by virtue of the Amendment to Complaint filed on January 25, 1974. The Court dismissed this action as to Defendants Church, Murray and Rose and ordered the names of their counsel, Malcolm Wheeler and Louise Wheeler, stricken as counsel of record herein.

2. *Jurisdiction.* All Defendants deny that this Court has jurisdiction of this action. Plaintiff asserts that this court has jurisdiction of this action under 28 U.S.C. § 1331(a); 28 U.S.C. § 1361; and the review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq. Plaintiff withdrew her assertion of jurisdiction under 28 U.S.C. § 1362.

3. *Nature of the Case.* This is an action in which the Plaintiff seeks to represent the "Kansas Delaware" class, as defined in the Complaint, in their claim to be entitled to receive all of the funds appropriated by Congress for per capita distribution in satisfaction of the judgments against the United States in Indian Claims Commission Docket Nos. 72 and 298, to the exclusion of groups designated for convenience and brevity as the "Cherokee Delaware" class, and the "Absentee Delaware" class. As to the funds appropriated by Congress for per capita distribution in satisfaction of the judgments in Indian Claims Commission Docket No. 337, Plaintiff claims that her class and the "Absentee Delaware" class are entitled to participate, to the exclusion of the "Cherokee Delaware" class. Secondarily, Plaintiff claims that even if one or both of the opposing classes be found to be entitled to share in the judgment funds in Docket Nos. 72 and 298, the members of the "Kansas Delaware" class which she seeks to represent are entitled to share per capita on an equal basis with the members of such opposing class or classes. All parties

who are members of the "Cherokee Delaware" class deny that Plaintiff or the class she seeks to represent have any entitlement to share in any of the judgment funds in question and, in addition, counsel for said parties has stated his intent to file a counter claim against those of the "Kansas Delaware" class who have received payments under Docket No. 337 and a cross claim against the federal Defendants, asserting that the payments under Docket No. 337 were improperly paid to and received by those members of the "Kansas Delaware" class who did receive such payments. The federal Defendants and those Defendants who are members of the "Absentee Delaware" class admit that those members of the "Kansas Delaware" class who duly applied and whose applications were approved are entitled to share in the funds appropriated to satisfy the judgment in Docket No. 337, but deny that Plaintiff or any members of the class she seeks to represent are entitled to share in the funds appropriated to satisfy the judgment in Dockets 72 and 298.

4. *Contentions of the Parties.* The contentions of the Plaintiff have been set forth in her Pre-Trial Statement filed herein on February 28, 1974. In addition, Plaintiff announced that further documentary materials would be offered either by way of a supplement to her Pre-Trial Statement or on her motion for summary judgment or at trial. The Defendants' contentions are set forth in their answers and briefs herein and will be further set forth in their motions to dismiss or for summary judgment, or at trial.

5. *Relief Asked.* Plaintiff seeks a preliminary and permanent injunction against the federal Defendants, enjoining said Defendants from enforcing 25 U.S.C. §§ 1181-1186 (Public Law 90-508) and 25 U.S.C. §§ 1291-1297 (Public Law 92-456), on the ground that said statutes are unconstitutional on their face. In addition, Plaintiff seeks a mandatory injunction in the nature of a writ of mandamus, to re-

quire the Secretary of the Interior to pay the judgment funds in question to Plaintiff and her class. Plaintiff further asserts that should she prevail herein, and should this action be certified as a class action as to the "Kansas Delaware" class, then, in addition to granting permanent injunctive relief against the said Secretary of the Interior, it will be necessary for the Court to establish a procedure by which claims can be made and submitted by the members of the "Kansas Delaware" class.

6. *Discovery.* All parties indicated a need for further discovery. To expedite this matter, the Court ordered and hereby orders that responses to all Interrogatories, Requests for Admissions and Requests for Production of Documents shall be made within two weeks from service of the Interrogatories or Requests; provided, however, that where response to any individual Interrogatories or Requests proves to be extraordinarily time consuming, the Court may, upon request, extend the time for response as to such individual Interrogatories or Requests.

7. *Motions.* The Defendants are given ten days from March 5, 1974, within which to file motions to dismiss, with supporting briefs; the Plaintiff shall have ten days from the date of service of said motion or motions within which to file her Answer Brief; and the movants shall have five days from the date of service of Plaintiff's Answer Brief within which to file their Reply Briefs. The parties indicated their hope and belief that this action can be determined on the merits on cross motions for summary judgment and, in that regard, the parties are encouraged to file said motions without delay.

8. *Exhibits.* Plaintiff tendered to the Court and to counsel all the exhibits contained in her Pre-Trial Statement, and, in addition, announced that she would have further documentary evidence. The Defendants tendered no exhibits. If this action should proceed to an evidentiary hearing, the parties shall, ten days prior to trial, exchange

originals or copies of all documentary evidence not previously furnished to counsel which they intend to offer at trial.

9. *Witnesses.* The Plaintiff listed the following witnesses:

1. Wanda June Weeks, 1909 Alladin, Norman, Oklahoma 73069
2. Mary Jane Grinter, 2318 S.W. 20th, Oklahoma City, Oklahoma 73108
3. Katherine Elizabeth Ware, 3225 S.W. 37th, Oklahoma City, Oklahoma 73119
4. Dennis E. Stock, 3225 S.W. 37th, Oklahoma City, Oklahoma 73119
5. Lewis A. Sigler, General Counsel, Committee on Interior and Insular Affairs, 1324 Longworth House Office Building, Washington, DC 20515
6. John E. Lynn, Administrative Assistant to Representative James R. Jones, 327 Cannon House Office Building, Washington, DC 20515
7. Lee Paden, Administrative Assistant to Senator Henry Bellmon, Senate Office Building, Washington, DC 20515
8. Ed Edmondson, Court at Fifth Street, Muskogee, Oklahoma 74401
9. Bruce Miller Townsend, 711 Thurston National Building, Tulsa, Oklahoma 74103 (adverse witness)
10. Lawrence Snake, 401 E. Steed Drive, Midwest City, Oklahoma 73110 (adverse witness)
11. Duard Barnes, Assistant Solicitor for Indian Affairs, United States Department of the Interior, Office of the Solicitor, Washington, DC 20240 (adverse witness)
12. Louis L. Rochmes, 1300 Connecticut Avenue, N.W., Washington, DC 20006 (adverse witness)

The names of all witnesses, other than witnesses whose testimony will be introduced by trial deposition, will be furnished to opposing counsel at least ten days prior to trial. This requirement shall not apply to rebuttal witnesses, the necessity of whose testimony cannot be anticipated before the time of trial.

10. *Class Action.* Plaintiff is directed to prepare and submit to the Court a proposed order certifying this action as a class action.

Dated: March 5, 1974.

/s/ Luther B. Eubanks
LUTHER B. EUBANKS, *United States District Judge*

O.K.:

/s/ Delmer L. Stagner
DELMER L. STAGNER and STEPHEN P. FRIOT, *Attorneys for Plaintiff.*

/s/ Givens L. Adams
GIVENS L. ADAMS, *Attorney for Defendants as set forth in Paragraph 1 hereof.*

/s/ C. J. Watts
CLYDE J. WATTS, *Attorney for Defendants as set for in Paragraph 1 hereof.*

/s/ Bruce Miller Townsend
BRUCE MILLER TOWNSEND, *Attorney for Defendants as set forth in Paragraph 1 hereof.*

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

(Title Omitted in Printing)

(Filed November 1, 1974)

Order

Upon consideration of pending motions in these consolidated actions, and the arguments and briefs submitted thereon, it is ORDERED that:

The pending motion to dismiss filed by the defendant United States in No. Civ. 73-586-E, Western District of Oklahoma, entitled Weeks v. United States, et al, is sustained, the action as against the Government being an unconsented suit not within the jurisdiction of the court. Affiliated Ute Citizens v. United States, 406 U.S. 128, 141-42; United States v. Sherwood, 312 U.S. 584; see Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 687. The pending motions to dismiss in both of the above entitled actions filed by defendant Morton and all defendants other than the United States are denied.

The pending motion of plaintiff for summary judgment and the motion for partial summary judgment by defendant Delaware Tribal Business Committee and defendants other than the United States and defendant Morton, both pending in No. 73-586-E, Western District of Oklahoma, entitled Wanda June Weeks v. United States, et al, are overruled, it being the view of the Court that there may be genuine issues as to some material facts and that summary judgment procedures in said action are inappropriate.

The plaintiff Weeks in No. 73-586-E, Western District of Oklahoma has moved that said action proceed as a class action on behalf of the Kansas Delawares. In No. 73-C-311, Northern District of Oklahoma, now transferred to

this district and consolidated with No. 73-586-E, the complaint requests that the action proceed also on behalf of the Kansas Delawares. In addition the motion of plaintiff Weeks in No. 73-586-E, requests that said action proceed against specified defendants as representatives of the Cherokee Delawares and the Absentee Delawares, respectively.

Pursuant to Rule 23(a), F.R.Civ.P., the court finds that the plaintiff class consisting of the Kansas Delawares, and the defendant classes consisting of the Cherokee Delawares and the Absentee Delawares are so numerous that joinder of all members thereof is impracticable; that there are questions of law or fact common to each class relating to the rights of said class in regard to the claim of unconstitutionality under 25 U.S.C.A. § 1291 and related statutes; that the claims of the representative parties plaintiff and defendant are typical of the claims of their respective classes whose alleged rights are involved herein; and that the representative parties plaintiff and defendant will fairly and adequately protect the interests of the respective classes.

The court further finds that this action may proceed as a class action on behalf of the plaintiff class and against the defendant classes both pursuant to Rule 23(b)(1)(B) and Rule 23(b)(2), since adjudication with respect to the individual members of the classes would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and since the defendant Morton and the several classes have acted on grounds generally applicable to said classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the classes as a whole. See Cranston v. Freeman, 290 F.Supp 785 (N.D. N.Y.), rev'd on other grounds *sub nom.* Cranston v. Hardin, 428 F.2d 822 (2d Cir.), cert. denied, 401 U.S. 949; Rod-

riguez v. Swank, 318 F.Supp. 289, 293-295 (N.D.Ill.), aff'd., 403 U.S. 901.

Pursuant to Rule 23(d), F.R.Civ.P., the court ORDERS that there be individual notice by certified mail to all members of the Kansas Delaware class who can be identified through reasonable effort, said notice to be mailed within 30 days hereafter, advising each member that these suits are being maintained as class actions for all Kansas Delawares and describing the nature of the suits; that the judgment, whether favorable or not to him or her, will be binding on all members of said Kansas Delaware class; and that any member may, if he or she desires, enter his or her separate appearance, on his or her own behalf or through counsel, within 45 days after the date of this order.

The court having granted the motions for class actions on behalf of the plaintiff Kansas Delawares in both of the above entitled cases, it is directed that the plaintiffs, by counsel, in both actions confer promptly with a view to agreement upon arrangements and procedures for notice and all other matters necessary for maintenance of these suits as class actions for the plaintiff Kansas Delawares. If there be any dispute concerning the same, the parties are directed to apply to the Honorable Fred Daugherty, Chief Judge of this district, for any necessary orders prescribing responsibilities as between the parties and counsel in connection with class action procedures. Such application to the Chief Judge should be made within 15 days from the date hereof.

As to the defendant classes of the Cherokee Delawares and the Absentee Delawares, in its discretion under 23(d), F.R.Civ.P., the court determines that personal notice to all members of said defendant classes is not necessary. Unlike the Kansas Delawares who have not had designated representatives and regular communications from them, it appears that the Cherokee Delawares and the Absentee

Delawares have been represented by the parties named as defendants in No. 73-586-E, entitled Weeks v. United States, et al. It is, therefore, ORDERED that notice to the defendant classes, the Cherokee Delawares and the Absentee Delawares, be given within 30 days hereof by publication in a tribal business letter or paper, or in a newspaper of general circulation in the city or town designated by the defendant representatives of said classes as having the most circulation to the members thereof. Said notice shall contain the same notifications and provisions for optional separate appearances, by such persons themselves or through counsel, as are provided hereinabove in the notice to members of the Kansas Delaware class.

It is directed that the plaintiffs, by, counsel, and the defendant representatives of the Cherokee Delawares and the Absentee Delawares, by counsel, also confer promptly with a view to agreement on an arrangement of procedures for such notice. If there be any dispute concerning the same, the parties are directed to apply to the Honorable Fred Daugherty, Chief Judge of this district, for any necessary order. Such application should be made within 15 days from the date hereof.

The court, having disposed of pending motions and applications preliminary to a final hearing on the merits, advises the parties that at an early date after completion of said notices and expiration of the time for additional appearances, the court will hold a hearing on the merits of these actions on all disputed issues of fact, including the constitutional issue as to whether there is a rational basis under constitutional standards for the provisions of 25 U.S.C.A. § 1291 and the statutes related thereto, excluding the Kansas Delawares from participation in the distribution of the judgment funds in dispute in these cases, on which issue, among others, the court will receive all competent proof for final determination on the merits, and final arguments on the merits.

DATED THIS 1st day of November, 1974.

/s/ William J. Holloway, Jr.
WILLIAM J. HOLLOWAY, JR.
United States Circuit Judge

/s/ Fred Daugherty
FRED DAUGHERTY
Chief Judge, Western District of Oklahoma

/s/ Luther B. Eubanks
LUTHER B. EUBANKS
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

(Title Omitted in Printing)

Amendment To Order

(Filed November 4, 1974)

On its own motion the court hereby amends its order entered November 1, 1974, in these consolidated actions to provide further as follows:

It is further ORDERED that the cost of notice by certified mail to the plaintiff class of the Kansas Delawares and the cost of notice by publication to the defendant Cherokee Delawares class and the defendant Absentee Delaware class shall be borne by the plaintiff. Cf. Eisen v. Carlisle & Jacquelin, 42 U.S.L.W. 4804. Prior to such notice by certified mail and publication, the proposed form of such notice and the proposed manner of publication shall be submitted to the Honorable Fred Daugherty, Chief Judge of the Western District of Oklahoma, for approval after service of a copy thereof on opposing counsel, together with notice stating when the same shall be presented to Chief Judge Daugherty.

DATED this 4th day of November, 1974.

/s/ William J. Holloway, Jr.
WILLIAM J. HOLLOWAY, JR.
United States Circuit Judge

/s/ Fred Daugherty
FRED DAUGHERTY
Chief Judge, Western District of Oklahoma

/s/ Luther B. Eubanks
LUTHER B. EUBANKS
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

(Title Omitted in Printing)

Order Approving Forms of Class Action Notice and Procedures For Giving Notice

(Filed November 18, 1974)

This matter comes on to be heard this 18th day of November, 1974, for the purpose of entry of an Order approving form of class action notice, approving the definitions of the respective classes, and approving procedures for giving said notice, the parties being present by counsel. The Court, having examined the suggested forms of notice to the respective classes herein, having heard the arguments of counsel and being fully advised,

IT IS ORDERED THAT the class action notice to the members of the Kansas Delaware class shall be given in the form attached hereto as Exhibit "A."

IT IS FURTHER ORDERED THAT the class action notice to the members of the Cherokee Delaware class shall be in the form attached hereto as Exhibit "B."

IT IS FURTHER ORDERED THAT the class action notice to the members of the Absentee Delaware class shall be in the form attached hereto as Exhibit "C."

IT IS FURTHER ORDERED THAT the notice by certified mail to the members of the Kansas Delaware class shall be mailed on or before Friday, November 22, 1974, and that a single notice may be sent to all adults and minors living at any one address.

IT IS FURTHER ORDERED THAT notice by publication to the Cherokee Delaware class shall be given in the Tulsa World.

IT IS FURTHER ORDERED THAT notice by publication to the Absentee Delaware class shall be given in the Andarko Daily News.

IT IS FURTHER ORDERED THAT the notices by publication shall be published in the Sunday, November 24, 1974 issues of the respective newspapers.

IT IS FURTHER ORDERED THAT Plaintiff shall bear the cost of publication of the notices as described above.

Dated this 18 day of November, 1974.

/s/ Fred Daugherty
FRED DAUGHERTY
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

(Title Omitted in Printing)

EXHIBIT "A"

Notice of Class Action Lawsuit—Certified Mail

TO: MEMBERS OF THE KANSAS DELAWARE CLASS OF INDIANS, AS DEFINED BELOW.

TAKE NOTICE THAT:

Two consolidated lawsuits are pending in the United States District Court for the Western District of Oklahoma (Federal Court in Oklahoma City, Oklahoma) which will affect your rights. In No. CIV-73-586-E, the Plaintiff, Wanda June Weeks (on behalf of herself and the "Kansas Delaware" class of Delaware Indians, as defined below); and in No. CIV-74-368-D, the Plaintiffs, Dorothy Frazier and Ruth Rattler (on behalf of that portion of the Kansas Delaware class which is descended from Lewis Ketchum), assert certain claims with respect to the funds held by the Defendant Rogers C. B. Morton, Secretary of the Interior of the United States, for payment of the judgments in Indian Claims Commission Dockets numbered 337, 72 and 298.

The Kansas Delaware class consists of all persons who have an ancestor who elected, pursuant to the "Treaty With the Delawares" of July 4, 1866, between the Delaware Nation and the United States of America, not to emigrate to Indian Country and whose name or the name of a lineal ancestor does not appear on the Delaware Indian per capita Payroll approved by the Secretary of the Interior on April 20, 1906. This notice is being sent to you because you may be a member of the Kansas Delaware class.

In this lawsuit, the representative Plaintiff, Wanda June Weeks, who is represented by Delmer L. Stagner and Stephen P. Friot, of the firm of Halley, Spradling, Stagner and Alpern, Attorneys at Law, Oklahoma City, Oklahoma, and the representative Plaintiffs, Dorothy Frazier and Ruth Rattler, represented by John Ghostbear, Attorney at Law, of Tulsa, Oklahoma, claim that they and the Kansas Delaware class are entitled to receive all of the funds appropriated by Congress to pay the judgment award handed down by the Indian Claims Commission in Dockets 72 and 298, and that the Kansas Delaware class and the Absentee Delaware class, to the exclusion of the Cherokee Delaware class, are entitled to receive all of the funds appropriated to pay the judgment award in Indian Claims Commission Docket 337. These awards were made as compensation for breaches by the United States of treaties with the Delaware Nation. The treaties which were breached were signed in 1818 and 1854.

Secondarily, the Plaintiffs claim that if the Kansas Delaware class is not found to be entitled to receive all of the judgment funds in Dockets 72 and 298, then the Kansas Delaware class is at least entitled to share in said funds with the "Cherokee Delaware" class and the "Absentee Delaware" class.

The Cherokee Delaware class consists of all persons whose name or the name of a lineal ancestor appears on the Delaware Indian per capita Payroll approved by the Secretary of the Interior on April 20, 1906.

The Absentee Delaware class is made up of those persons whose name or the name of a lineal ancestor is on or eligible to be on the constructed base census roll of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary of the Interior.

The Cherokee Delawares and the Absentee Delawares deny that the Kansas Delawares have a right to receive all of the judgement funds, and, as to the portion of the funds which is compensation for the breach of the 1854 treaty, both the Cherokee Delawares and the Absentee

Delawares deny that the Kansas Delawares should be entitled to share with the Cherokee Delawares and the Absentee Delawares. As to the portion of the judgment funds which is compensation for the breach of the 1818 treaty, the Cherokee Delawares deny that the Kansas Delawares have any entitlement to share and the Absentee Delawares contend that only those Kansas Delawares who filed applications to share (and whose applications were approved) may share.

The Delaware Tribal Business Committee, its members and their successors in office and the Defendants Bruce Miller Townsend, Nathan H. Young, Mary Townsend Crow, Henry A. Secondine and Y. A. Scott have been designated by the Court as the representatives of the Cherokee Delaware class. The Absentee Delaware Tribe of Oklahoma Business Committe, it members and their successors in office, and the Defendants Arthur L. Thomas, Alene Martinez, Myrtle Holder, Tommy Holder, Lawrence Snake and Charles Taylor have been designated by the Court as the representatives of the Absentee Delaware class.

As stated above, this notice is being sent to you because you may be a member of the Kansas Delaware class. You will be bound by the judgment in this action, whether or not favorable to you. If you so desire, you may, no later than December 16, 1974, enter your separate appearance in these actions, either in your own behalf or through counsel of your own selection.

THIS NOTICE SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OR CORRECTNESS OF ANY CLAIMS OR DEFENSES ASSERTED IN THIS LAWSUIT. The sole purpose of this notice is to inform you of this lawsuit so that you may take what steps, if any, you desire to take in relation to it.

Dated: November 18, 1974, at Oklahoma City, Oklahoma.

/s/ FRED DAUGHERTY
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

(Title Omitted in Printing)

EXHIBIT "B"

Notice by Publication of Class Action Lawsuit

TO: MEMBERS OF THE DELAWARE TRIBE OF INDIANS, DESIGNATED HEREIN AS THE CHEROKEE DELAWARE CLASS OF INDIANS, AS DEFINED BELOW.

TAKE NOTICE THAT:

Two consolidated lawsuits are pending in the United States District Court for the Western District of Oklahoma (Federal Court in Oklahoma City, Oklahoma) which will affect your rights. In No. CIV-73-586-E, the Plaintiff, Wanda June Weeks (on behalf of herself and the "Kansas Delaware" class of Delaware Indians, as defined below); and in No. CIV-74-368-D, the Plaintiffs, Dorothy Frazier and Ruth Rattler (on behalf of that portion of the Kansas Delaware class which is descended from Lewis Ketchum), assert certain claims with respect to the funds held by the Defendant Rogers C. B. Morton, Secretary of the Interior of the United States, for payment of the judgments in Indian Claims Commission Dockets numbered 337, 72 and 298.

The Kansas Delaware class consists of all persons who have an ancestor who elected, pursuant to the "Treaty With the Delawares" of July 4, 1866, between the Delaware Nation and the United States of America, not to emigrate to Indian Country and whose name or the name of a lineal ancestor does not appear on the Delaware Indian per capita Payroll approved by the Secretary of the Interior on April 20, 1906.

In this lawsuit, the representative Plaintiff, Wanda June Weeks and the representative Plaintiffs, Dorothy Frazier and Ruth Rattler, claim that they and the Kansas Delaware class are entitled to receive all of the funds appropriated by Congress to pay the judgment award handed down by the Indian Claims Commission in Dockets 72 and 298, and that the Kansas Delaware class and the Absentee Delaware class, to the exclusion of the Cherokee Delaware class, are entitled to receive all of the funds appropriated to pay the judgment award in Indian Claims Commission Docket 337. These awards were made as compensation for breaches by the United States of treaties with the Delaware Nation. The treaties which were breached were signed in 1818 and 1854.

Secondarily, the Plaintiffs claim that if the Kansas Delaware class is not found to be entitled to receive all of the judgment funds in Dockets 72 and 298, then the Kansas Delaware class is at least entitled to share in said funds with the "Cherokee Delaware" class and the "Absentee Delaware" class.

The Cherokee Delaware class consists of all persons whose name or the name of a lineal ancestor appears on the Delaware Indian per capita Payroll approved by the Secretary of the Interior on April 20, 1906. This notice is being sent to you because you may be a member of the Cherokee Delaware class.

The Absentee Delaware class is made up of those persons whose name or the name of a lineal ancestor is on or eligible to be on the constructed base census roll of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary of the Interior.

The Cherokee Delawares and the Absentee Delawares deny that the Kansas Delawares have a right to receive all of the judgement funds, and, as to the portion of the funds which is compensation for the breach of the 1854

treaty, both the Cherokee Delawares and the Absentee Delawares deny that the Kansas Delawares should be entitled to share with the Cherokee Delawares and the Absentee Delawares. As to the portion of the judgment funds which is compensation for the breach of the 1818 treaty, the Cherokee Delawares deny that the Kansas Delawares have any entitlement to share and the Absentee Delawares contend that only those Kansas Delawares who filed applications to share (and whose applications were approved) may share.

The Cherokee Delaware class is represented in this lawsuit by Bruce Miller Townsend, Attorney at Law, Tulsa, Oklahoma, and Clyde J. Watts, Attorney at Law, Oklahoma City, Oklahoma. The Absentee Delaware class is represented in this lawsuit by Givens L. Adams, Assistant United States Attorney, Oklahoma City, Oklahoma, and by Duard Barnes, Assistant Solicitor for Indian Affairs, United States Department of the Interior, Washington, D. C.

The Delaware Tribal Business Committee, its members and their successors in office and the Defendants Bruce Miller Townsend, Nathan H. Young, Mary Townsend Crow, Henry A. Secondine and Y. A. Scott have been designated by the Court as the representatives of the Cherokee Delaware class. The Absentee Delaware Tribe of Oklahoma Business Committee, it members and their successors in office, and the Defendants Arthur L. Thomas, Alene Martinez, Myrtle Holder, Tommy Holder, Lawrence Snake and Charles Taylor have been designated by the Court as the representatives of the Absentee Delaware class.

As stated above, this notice is being sent to you because you may be a member of the Cherokee Delaware class. You will be bound by the judgment in this action, whether or not favorable to you. If you so desire, you may, no later than December 16, 1974, enter your separate ap-

pearance in these actions, either in your own behalf or through counsel of your own selection.

THIS NOTICE SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OR CORRECTNESS OF ANY CLAIMS OR DEFENSES ASSERTED IN THIS LAWSUIT. The sole purpose of this notice is to inform you of this lawsuit so that you may take what steps, if any, you desire to take in relation to it.

Dated: November 18, 1974, at Oklahoma City, Oklahoma.

/s/ FRED DAUGHERTY
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

(Title Omitted in Printing)

EXHIBIT "C"

Notice by Publication of Class Action Lawsuit

To: MEMBERS OF THE ABSENTEE DELAWARE TRIBE OF OKLAHOMA NOW KNOWN AS THE DELAWARE TRIBE OF WESTERN OKLAHOMA, DESIGNATED AS THE ABSENTEE DELAWARE CLASS OF INDIANS, AS DEFINED BELOW.

TAKE NOTICE THAT:

Two consolidated lawsuits are pending in the United States District Court for the Western District of Oklahoma (Federal Court in Oklahoma City, Oklahoma) which will affect your rights. In No. CIV-73-586-E, the Plaintiff, Wanda June Weeks (on behalf of herself and the "Kansas Delaware" class of Delaware Indians, as defined below); and in No. CIV-74-368-D, the Plaintiffs, Dorothy Frazier and Ruth Rattler (on behalf of that portion of the Kansas Delaware class which is descended from Lewis Ketchum), assert certain claims with respect to the funds held by the Defendant Rogers C. B. Morton, Secretary of the Interior of the United States, for payment of the judgments in Indian Claims Commission Dockets numbered 337, 72 and 298.

The Kansas Delaware class consists of all persons who have an ancestor who elected, pursuant to the "Treaty With the Delawares" of July 4, 1866, between the Delaware Nation and the United States of America, not to emigrate to Indian Country and whose name or the name of a lineal ancestor does not appear on the Delaware Indian per capita Payroll approved by the Secretary of the Interior on April 20, 1906.

In this lawsuit, the representative Plaintiff, Wanda June Weeks and the representative Plaintiffs, Dorothy Frazier and Ruth Rattler, claim that they and the Kansas Delaware class are entitled to receive all of the funds appropriated by Congress to pay the judgment award handed down by the Indian Claims Commission in Dockets 72 and 298, and that the Kansas Delaware class and the Absentee Delaware class, to the exclusion of the Cherokee Delaware class, are entitled to receive all of the funds appropriated to pay the judgment award in Indian Claims Commission Docket 337. These awards were made as compensation for breaches by the United States of treaties with the Delaware Nation. The treaties which were breached were signed in 1818 and 1854.

Secondarily, the Plaintiffs claim that if the Kansas Delaware class is not found to be entitled to receive all of the judgment funds in Dockets 72 and 298, then the Kansas Delaware class is at least entitled to share in said funds with the "Cherokee Delaware" class and the "Absentee Delaware" class.

The Cherokee Delaware class consists of all persons whose name or the name of a lineal ancestor appears on the Delaware Indian per capita Payroll approved by the Secretary of the Interior on April 20, 1906.

The Absentee Delaware class is made up of those persons whose name or the name of a lineal ancestor is on or eligible to be on the constructed base census roll of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary of the Interior. This notice is being sent to you because you may be a member of the Absentee Delaware class.

The Cherokee Delawares and the Absentee Delawares deny that the Kansas Delawares have a right to receive all of the judgement funds, and, as to the portion of the funds which is compensation for the breach of the 1854 treaty, both the Cherokee Delawares and the Absentee

Delawares deny that the Kansas Delawares should be entitled to share with the Cherokee Delawares and the Absentee Delawares. As to the portion of the judgment funds which is compensation for the breach of the 1818 treaty, the Cherokee Delawares deny that the Kansas Delawares have any entitlement to share and the Absentee Delawares contend that only those Kansas Delawares who filed applications to share (and whose applications were approved) may share.

The Cherokee Delaware class is represented in this lawsuit by Bruce Miller Townsend, Attorney at Law, Tulsa, Oklahoma, and Clyde J. Watts, Attorney at Law, Oklahoma City, Oklahoma. The Absentee Delaware class is represented in this lawsuit by Givens L. Adams, Assistant United States Attorney, Oklahoma City, Oklahoma, and by Duard Barnes, Assistant Solicitor for Indian Affairs, United States Department of the Interior, Washington, D. C.

The Delaware Tribal Business Committee, its members and their successors in office and the Defendants Bruce Miller Townsend, Nathan H. Young, Mary Townsend Crow, Henry A. Secondine and Y. A. Scott have been designated by the Court as the representatives of the Cherokee Delaware class. The Absentee Delaware Tribe of Oklahoma Business Committee, it members and their successors in office, and the Defendants Arthur L. Thomas, Alene Martinez, Myrtle Holder, Tommy Holder, Lawrence Snake and Charles Taylor have been designated by the Court as the representatives of the Absentee Delaware class.

As stated above, this notice is being sent to you because you may be a member of the Absentee Delaware class. You will be bound by the judgment in this action, whether or not favorable to you. If you so desire, you may, no later than December 16, 1974, enter your separate appearance in these actions, either in your own behalf or through counsel of your own selection.

THIS NOTICE SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OR CORRECTNESS OF ANY CLAIMS OR DEFENSES ASSERTED IN THIS LAWSUIT. The sole purpose of this notice is to inform you of this lawsuit so that you may take what steps, if any, you desire to take in relation to it.

Dated: November 18, 1974, at Oklahoma City, Oklahoma.

/s/ FRED DAUGHERTY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE WESTERN DISTRICT OF OKLAHOMA

(Title Omitted in Printing)

Amendment To Answer

(Filed March 12, 1975)

These Defendants, the Delaware Tribal Business Committee, Bruce Miller Townsend, Nathan H. Young, Mary Townsend Crow, Henry A. Secondine, and Y. A. Scott, amend the Answer filed on November 16, 1973 in the case of Wanda June Weeks, Plaintiff vs. United States of America, et al. under Civ-73-586-E and do hereby allege and state as follows, to-wit:

1. These Defendants ratify each and every defense and allegation as contained in said Answer filed November 16, 1973, save and except the following in which these Defendants respectively delete, to-wit:

a. That the language of the 8th Defense is deleted, added and reasserted so as to make same read:

> "No constitutional issue is properly raised because Plaintiff, on her own behalf and purportedly on behalf of all others similarly situated, are not proper parties to be considered members of the Delaware Tribe of Indians, did not file a claim before the Indian Claims Commission pursuant to the Act of August 13, 1946, (60 Stat. 1049) nor joined in the appeal to the Court of Claims, nor made appearances before the Congress of the United States. Further, Plaintiffs did not file a claim before the Indian Claims Commission under Docket 337 or appear before the Court of Claims or before the Congress of the United States and were given the right to apply and appeal from rejected applications."

b. That the language of the 21st paragraph of the 12th Defense (erroneously spelled "twelveth" at page 4) is deleted, added and reasserted so as to make same read:

> "These Defendants admit the allegations contained in sentences 2, 3, 7, 8 and 9 and deny the allegations contained in sentences 4, 5, 10 and 11 and have no knowledge or information sufficient to form a belief as to the truth of sentence 1 of said paragraph 21. These Defendants, with regard to sentence 6 thereof, admit the allegation that the Absentee Delaware Tribe of Western Oklahoma and the Delaware Tribe of Indians contend that said 'Kansas Delawares' are not entitled to share in judgment given in Dockets 72 and 298."

2. In all other respects these Defendants ratify and affirm said Answer filed November 16, 1973 by this Amendment in said case of Weeks vs. U.S.A., et al. Civ-73-586-E.

This Intervenor, the Delaware Tribe of Indians, for Amendment to its Answer previously filed herein in the case of Dorothy Frazier and Ruth Rattler, Plaintiffs, vs. Rogers B. Morton, individually and in his capacity as Secretary of the Interior of the United States of America, Defendant, the Delaware Tribe of Indians, Intervenor, under Civ-74-368-D, said Answer having been filed on or about the 31st day of December, 1973, hereby ratifies and affirms each and every material allegation and denial as contained in said Answer in accordance with the following, to-wit:

1. Said Intervenor does hereby ratify and affirm each and every material allegation and denial found in said Answer and does hereby amend said Answer in the following, to-wit:

a. That the language of the 4th Defense is deleted, added and reasserted so as to make same read:

> "No constitutional issue is properly raised because Plaintiffs Frazier and Rattler were not and are not proper parties to be considered as members of the Delaware Tribe of Indians, did not file a claim before the Indian Claims Commission under Docket 337, nor joined in the appeal to the Court of Claims, nor made appearances before the Congress of the United States and although having actually received monies supposedly as members of the Delaware Tribe of Indians in May, 1971 and entered on that roll. Further, Plaintiffs did not file a claim before the Indian Claims Commission under Docket 337 nor appeared before the Court of Claims or before the Congress of the United States and were given the right to apply and appeal from rejected applications."

b. That the language of the 9th paragraph of the 7th Defense is deleted, added and reasserted so as to make same read:

> "Applicant admits that a partial distribution of Docket 337 judgment funds was made to certain persons pursuant to 25 U.S.C. 1181 et seq."

c. That the language of the 10th paragraph of the 7th Defense is deleted, added and reasserted so as to make same read:

> "Applicant has no direct knowledge as to the allegations contained in paragraph 10 of Plaintiffs' First Claim of Complaint."

In all other respect, Intervenor ratifies and affirms the Answer hereinbefore filed in the case of Frazier and Rattler, Plaintiffs, vs. Morton, Defendant and the Delaware Tribe of Indians, Intervenor.

/s/ BRUCE MILLER TOWNSEND
BRUCE MILLER TOWNSEND and CLYDE J. WATTS
Attorneys for Defendant DELAWARE TRIBAL BUSINESS COMMITTEE, BRUCE MILLER TOWNSEND, NATHAN H. YOUNG, MARY TOWNSEND CROW, HENRY A. SECONDINE, Y. A. SCOTT and DELAWARE TRIBE OF INDIANS, *Intervenor*

(Certificate of Service Omitted in Printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(Title Omitted in Printing)

Reporter's Transcript of Trial Proceedings

Had on May 27, 1975

United States Courthouse
Oklahoma City, Oklahoma

BEFORE: THE HONORABLE WILLIAM J. HOLLOWAY
THE HONORABLE FRED DAUGHERTY
THE HONORABLE LUTHER B. EUBANKS

Tim Holmes, C.S.R. 3321 Federal Building
232-5000
U.S. Court Reporter Oklahoma City, Oklahoma

• • •

[Tr. p. 127] Mr. Stagner: No.

Judge Holloway: It will be received.

Mr. Adams: Your Honor, we would request to go back to the affadavit and make an offer of the Secretary and Delaware Tribe of Indians Exhibit Number 31, which is an affadavit of Henry Secondine, dated May 26, 1975.

Judge Holloway: Any objection?

Mr. Stagner: Object to it on the grounds of hearsay.

Judge Holloway: I thought we had ruled on that one previously for Mr. Secondine's affadavit, unless this is a separate affadavit.

Mr. Townsend: It is.

Mr. Adams: It is a separate one.

Judge Holloway: The ruling is the same, the objection is sustained on the grounds that the Exhibit 31 is hearsay.

Mr. Adams: And with that, Your Honor, the Secretary of Interior and the Delaware Tribe of Indians rest.

Judge Holloway: Any further evidence for the Defendants?

Mr. Rothbaum: Yes, Your Honor. The Absentee Delaware class Defendant, Intervenor Defendant, have a few exhibits to submit for the Court's examination into evidence. I regret that I do not have extra copies and that the exhibits are out of order in numerical sequence. The reason for that, [Tr. p. 128] Your Honor, is that in an effort, in light of the large number of documentary materials which both sides had, these were submitted on a list for examination by Plaintiff's Counsel and Plaintiffs did have the same for Defense Counsel. They still bear the numbers they bore at that time and because of the possibility of duplication I have had to remove several since it would have been duplicates of documents that have already been introduced in evidence today, or offered for production; and, therefore, I would start with Exhibit Number Nine with explanation.

If that is acceptable to the Court, I would, of course, have extra copies if the Court desires.

Judge Holloway: Very well. This will be Absentee's Exhibit Nine, then, is that correct?

Mr. Rothbaum: Yes, Your Honor. Which is a letter written in the official course of business from the Acting Associate Commissioner of the Bureau of Indian Affairs to the Senator Fred R. Harris in regard to the membership requirements for the Delaware Tribe of Oklahoma, dated June 18, 1965.

Judge Holloway: Any objection?

Mr. Stagner: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Next is a letter from the—Verrick O. French, Legislative Assistant to Senator Harris.

[Tr. p. 129] Judge Holloway: Which number?

Mr. Rothbaum: I'm sorry, Number Ten. To Mr. Harold Pruner, Claims Representative, and member of the Tribal Council of the Delaware Tribe of Oklahoma, dated September 24, 1968.

For the benefit of the Court, I will state that Mr. Pruner is available in the Courtroom and able to come to the stand if Plaintiffs desire.

Judge Holloway: Any objection?

Mr. Friot: No objection.

Judge Holloway: The Defendant Absentee's Exhibit Ten is admitted.

Mr. Rothbaum: Number Eleven is a letter from Senator Fred Harris to Mr. Pruner, dated September 3, 1968, in regard to testimony on distribution of Indian Claims Legislation, Docket Number 337.

Judge Holloway: Any objection?

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 12 is a letter from Mr. Pruner to Congressman Ed Edmondson, dated October 9, 1969, with regard to the final award entered in Indian Claims Commission Dockets 72 and 298.

Judge Holloway: Any objection?

Mr. Friot: No objection.

[Tr. p. 130] Judge Holloway: There being none, the Defendant Absentee's Exhibit 12 is admitted.

Mr. Rothbaum: Number 14 on our list, which is a telegram from Congressman Edmondson to Mr. Pruner, dated

December 11, 1969, regarding the passage of the distribution legislation for Docket 72 and 298, the Appropriation Statutes.

Judge Holloway: Any objection?

Mr. Friot: No objection.

Judge Holloway: There being none, the Defendant's Exhibit 14 is admitted.

Mr. Rothbaum: Exhibit 15 is again a letter from Mr. Pruner to Senator Harris, this letter is dated December 17, 1969, in regard to the legislation on the final award entered in 72 and 298 and the date for the hearings which were to be held by the Senate in regard to the distribution of that final award.

Mr. Friot: No objection.

Judge Holloway: No objection, it will be admitted.

Mr. Rothbaum: Number 16 is a copy, which has been submitted to Plaintiffs for examination, of agenda on the Sub-Committee on Indian Affairs, Commission on Insulary Affairs, United States House of Representatives, in regard to the testimony and witnesses on the witness list on HR 5200, which was distribution of legislation for Dockets—Indian Claims Commission Dockets 72 and 298.

[Tr. p. 131] Judge Holloway: Any objection?

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 17 is a letter from Lewis A. Sigler, who was, at the time, Chief Counsel and Consultant on Indian Affairs for the House Interior Committee to Mr. Lawrence Snake, President of the Delaware Tribe, in regard to the distribution and legislation, 72, 298. Mr. Snake is available in the Courtroom and available to be called to the Courtroom if the Plaintiff so desires.

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 18 is a letter from Mr. Sigler to Mr. Pruner, it is a—its substance is identical to the previous exhibit.

Judge Holloway: Any objection?

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 19 is a letter from Senator Henry M. Jackson, Chairman on the Committee on Interior and Insulary Affairs, dated July 12, 1972, to Mr. Lawrence Snake, in regard to Senate Bill 1067, distribution legislation upon the final award and docket, Indian Claims Docket 72 and 298.

Mr. Friot: No objection.

[Tr. p. 132] Judge Holloway: There being none, it will be admitted.

Mr. Rothbaum: Number 20 is a letter from Mr. Snake to Senator McGovern, Chairman of the Indian Affairs Sub-Committee, dated July 18, 1972, in regard to Senate Bill 1067; same subject matter as the previous bill—as the previous exhibit, that is, the same bill.

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 21 is a letter from Senator Bellmon to Mr. Pruner, dated August 1, 72, in regard to hearings on the distribution legislation for the final award entired in Indian Claims Docket 72 and 298.

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 22 is a letter from Mr. Snake to—I beg the Court's pardon. From Mr. Snake to Chairman Aspinall, of the House Committee on Interior and Insular Affairs, dated September 19, 1972, same subject matter.

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: 23, Exhibit Number 23, is a letter from Mr. Pruner to Mr. Lewis A. Sigler in regard to the same subject matter; that is, the Indian Claims Commission final award entered in Docket 72 and 298, the date is September 26, 1972.

[Tr. p. 133] Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 25 is a memorandum submitted by the Associate Solicitor of the Division of Indian Affairs of the Department of Interior, submitted to him by Mr. Louis L. Rochmes, Attorney for the Delaware Tribe of Indians and the Absentee Delaware Tribe on July 14, 1972.

Mr. Friot: May I first examine this?

Mr. Rothbaum: Certainly.

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 26 is the response to that letter and the memorandum from Mr. William A. Gershuny, Associate Solicitor of the Division of Indian Affairs, written to Mr. Rochmes, dated July 26, 1973; and it, I believe, constitutes an official government document.

Judge Holloway: Any objection?

Mr. Friot: May I inquire of counsel, the date according to the list of exhibits of the Absentee Delawares is January 26th.

Mr. Rothbaum: Is that not what I said?

Mr. Friot: You said July 26th.

Mr. Rothbaum: Made an error, January 26, 1973.

Judge Daugherty: Of '73?

[Tr. p. 134] Mr. Rothbaum: January 26, 1973, yes, Judge.

Judge Holloway: No objection, Exhibit 26 is admitted.

Mr. Rothbaum: Exhibit 27 is memorandum written May 16, 1973 by Charles E. Delaney, Acting Area Director of Anadarko Indian Affairs, in regard to membership resolution of the Absentee Delaware Tribe, approval of the membership resolution by the Acting Assistant Commissioner, the governing resolution of the tribe and including official certified copies of the same.

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: 28 is an official certified copy of the official membership resolution of the Delaware Tribe of Oklahoma, certified by the Department of Interior December 22, 1956.

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 29 is a letter from the Acting Area Director of the Anadarko Area of the Bureau of Indian Affairs, dated April 16, 1957, written to the Commissioner of the Bureau of Indian Affairs regarding membership resolution which have been sent to the Acting Area Director by the Delaware Tribe of Western Oklahoma.

Mr. Stagner: If the Court please, on this line of testimony we, of course, have our objection as to [Tr. p. 135] materiality, which the Court told us would extend throughout. We didn't really renew this as to this Defendant but

I think the record shows that we do object to any of these that are offered on the basis of the issue of tribality. We have a continuing and running objection to materiality.

Judge Holloway: That is correct, you do.

Mr. Stagner: To it as well as the other Defendants.

Judge Daugherty: Only as to materiality, is that right?

Judge Holloway: Judge Daugherty was asking you, only as to materiality?

Mr. Stagner: Yes, sir.

Judge Holloway: Very well. The objection is overruled and Defendant's Exhibit 29 is received.

You do have a continuing objection on that ground.

Mr. Rothbaum: Exhibit Number 31 is a certified copy of the governing Resolution of the Delaware Tribe, it was certified by the Assistant Secretary of the Interior, July 5, 1958.

Mr. Friot: No objection.

Judge Holloway: It will be received.

Mr. Rothbaum: Exhibit Number 34 is a letter from the Acting Superintendent of the Anadarko Agency certifying the results of an election taken in regard to the question of whether or not the constitution and By-laws of the Delaware Tribe would or would not be approved.

[Tr. p. 136] Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Exhibit 38 through 40 I introduce as a group rather than separate them, if that is agreeable with the Court. They consist of the following: Exhibit 38 is a memorandum from the Commissioner, Bureau of Indian Affairs, dated February 3, 1969, to the Area Director of

the Anadarko Area, in regard to the constructed based roll of the Delaware Tribe of Western Oklahoma.

Judge Holloway: You might better see if we can take objection, if any, as we go. That's 38.

Mr. Friot: No objection to 38.

Mr. Rothbaum: I would add for the benefit of the Court, this is the roll referred to in 25 U.S.C. 1291 through 1297; that's the so-called 1940 rolls.

Judge Holloway: Exhibit 38 is admitted.

Mr. Rothbaum: Exhibit 38 is the memorandum certifying it as the official roll.

Exhibit 39 is the certificate of approval of the roll from the Acting Assistant Commissioner of the Bureau of Indian Affairs, and this is dated February 3, 1969.

Judge Holloway: Any objection to 39?

Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: Number 40 is the Roll itself.

[Tr. p. 137] Mr. Friot: No objection.

Judge Holloway: It will be admitted.

Mr. Rothbaum: These are attached as a group, Judge Holloway, because of the two letters of transmittal.

Judge Holloway. Very well. Exhibits 38 through 40 without objection, are received.

Mr. Rothbaum: And upon that, this Defendant closes proof.

Judge Holloway: Very well. Is there further proof from the Defendant, the Cherokee Delawares?

Mr. Townsend: No further proof, if Your Honor please.

Judge Holloway: Is there any rebuttal evidence?

Mr. Stagner: Yes, sir. We will have several rebuttal evidence in view of the Court's overruling our materiality. I wonder if we could have ten minutes before we commence on that. I believe there will be a lot of documentary evidence, I don't believe there will be any live witnesses in the case.

Judge Eubanks: How long do you estimate, Mr. Stagner, that you estimate it will take you to put on your documentary evidence?

Mr. Stagner: Oh, perhaps—I believe we can get it done in an hour. It's just going through the motions again, as we did before, getting it in, getting the record

• • •

III. THE JUDGMENT, ORDER AND DECISION

(The opinion and judgment of the District Court were printed in the Jurisdictional Statement of Appellants Delaware Tribal Business Committee, *et al.* in No. 75-1301, and are not reprinted herein. The Opinion appears at pages 1a-87a; the Judgment is at pages 88a-89a. The Judgment and Opinion were also printed as part of Appendix A, pages 1-90 of the Jurisdictional Statement of Appellants Absentee Delaware Tribe of Oklahoma Business Committee, *et al.* in No. 75-1335.)

IV. PARTS OF THE RECORD TO WHICH THE PARTIES WISH TO DIRECT THE COURT'S PARTICULAR ATTENTION

Plaintiff's Exhibit 1 (Vol. XXV of the Appeal Record).

VERIFICATION OF ELIGIBILITY TO SHARE IN DELAWARE JUDGMENT FUNDS

Pursuant to Act of October 3, 1972

This form must be completed by or on behalf of all persons who were enrolled pursuant to the Act of September 21, 1968 and should be mailed or delivered to the Area Director, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, *no later than February 28, 1973.*

PENALTY FOR PRESENTING FRAUDULENT CLAIM: Fine of not more than $10,000 or imprisonment for not more than 5 years, or both. (See 62 Stat. 698)

I SHARED IN THE DISTRIBUTION OF DELAWARE JUDGMENT FUNDS FROM INDIAN CLAIMS COMMISSION DOCKET 337 AND HEREBY CLAIM MY SHARE OF THE DELAWARE PER CAPITA PURSUANT TO THE ACT OF OCTOBER 3, 1972, DOCKETS 72 AND 298.

1. Present name: Weeks, Wanda June.

2. My name as listed on docket 337: Weeks, Wanda June.

3. Sex: Female.

4. Birthdate: March 14, 1931.

5. Present mailing address: 3200 S.W. 42, Oklahoma City, Oklahoma 73119

6. Date:

7. Was #1 living on October 3, 1972?

8. Signature of enrollee or sponsor:

9. Relationship to enrollee if person signing is not same as #1:

YOU DO NOT NEED TO ATTACH BIRTH CERTIFICATE
COMPLETE FOLLOWING IF ENROLLEE IS DEAD

10. Date Enrollee Died:

ATTACH DEATH CERTIFICATE TO BACK OF THIS FORM

Recommendation of Tribal Review Committee:

.....Approval

.....Rejection

Signature of Examiner

Plaintiff's Exhibit 4 (Vol. XXV of the Appeal Record).

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

August 16, 1973

Mrs. Wanda June Weeks
3209 S. W. 42
Oklahoma City, Oklahoma 73119

Dear Mrs. Weeks:

You appealed the rejection of the applications filed for the persons listed below for enrollment to share in the judgment funds awarded to the Delaware Tribe of Indians and the Absentee Delaware Tribe of Western Oklahoma in Indian Claims Commission Dockets 298 and 72, being distributed pursuant to the Act of October 3, 1972 (86 Stat. 762):

Brenda June Weeks
Michael Arley Weeks
Wanda June Weeks

Section 2 of the statute directs the Secretary of the Interior to prepare a roll of all persons who meet the following requirements:

(a) they were born on or prior to and were living on the date of this Act; and

(b) they are citizens of the United States; and

(c)(1) their name or the name of a lineal ancestor appears on the Delaware Indian per capita payroll approved by the Secretary on April 20, 1906, or

(2) their name or the name of a lineal ancestor is on or is eligible to be on the constructed base census roll as of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary.

The Muskogee Tribal Operations Officer of the Bureau of Indian Affairs, acting under delegation of authority, rejected your application because you did not prove that you have a lineal ancestor whose name appears or was entitled to appear on the 1906 Delaware Indian per capita payroll.

According to the records, you are descendants of Annie Grinter, a Delaware Indian who chose to remain in Kansas pursuant to Article 9 of the Treaty of July 4, 1866 (14 Stat. 793), between the United States and the Delaware Tribe, who, therefore, did not emigrate to the Cherokee Nation with the rest of the Delaware Tribe. The Treaty specified in Article 9 that after the Kansas Delawares had received certificates of citizenship, fee patents and their pro rata shares of annuities and trust property held by the United States for the Delaware Tribe they would cease to be members of the Delaware Tribe and thereafter lose their eligibility to participate in Delaware councils and share in the property or annuities of the Delaware Tribe. The records of the National Archives indicate that the Kansas Delawares received fee patents to their Kansas lands, were issued certificates of citizenship and received their pro rata shares of annuities and trust property held by the United States for the Delaware Tribe. Inasmuch as the conditions of Article 9 of the Treaty were fulfilled, the Kansas Delawares ceased to be members of the Delaware Tribe, and therefore, were not entitled to be included on the 1906 per capita payroll.

The fact that the Area Director did not act on your applications within 60 days of receipt has no bearing on your eligibility for enrollment. You still must meet the requirements specified in the Act in order to qualify for enrollment to share in the judgment funds.

Sharing in the Docket 337 Delaware judgment funds is not sufficient to establish eligibility for enrollment to share

in the funds being distributed under the 1972 Act. You have failed to establish that you meet the requirements for enrollment specified in the Act. Therefore, it must be concluded that you are not entitled to share in the distribution of the judgment funds awarded the Delaware Tribe of Indians and the Absentee Delaware Tribe of Western Oklahoma.

Therefore, it must be concluded that you are not entitled to share in the distribution of the judgment funds awarded the Delaware Tribe of Indians and the Absentee Delaware Tribe of Western Oklahoma.

Pursuant to the authority to decide enrollment appeals delegated to the Solicitor by the Secretary of the Interior your appeal is denied.

Sincerely yours,

/s/ DUARD R. BARNES
Associate Solicitor
For Division of Indian Affairs

Excerpts from Plaintiff's Exhibit 51c
(Vol. XXVI of the Appeal Record).

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
MUSKOGEE AREA OFFICE
MUSKOGEE, OKLAHOMA 74401

Memorandum

To: Commissioner of Indian Affairs
From: Division of Tribal Operations, MAO
Subject: Appeals from Rejections of Enrollment Applications. We enclose the timely filed appeals for

Bessie B. Stock	Vera F. Cox
George W. Grinter, Jr.	Loyd Russell Vaughn
George W. Grinter III	Robin Gale Cox
Robert Eugene Grinter	Debra Renae Cox
Eunice O. Johnson	Clarence A. Weeks, III
Joyce Gail Denzer	Steve Alan Weeks
Wallace Reed Hodge	Martin Alden Weeks
Jewel Jenice Hodge	Brenda June Weeks
David Edward Hodge	Michael Arley Weeks
Kevin Richard Denzer	Annie K. Langford
Katherine E. Ware	George Warren Byrd
Mary Ione Grinter	Richard Lee Byrd
Dennis Eugene Stock	Robert W. Byrd
Kathy Ann Stock	Michael Warren Byrd
Mary Jane Leiter	Georgia Diane Garland
Kenneth Charles Martin	Jerrod L. Garland
Scott Bly Leiter	Jason L. Garland
Shari Carmel Leiter	Arthur Conyne Cox III
Gary Alan Leiter	Wanda Weeks

from rejections of applications for enrollment to share in dockets 72 and 298 judgment funds being distributed pursuant to the Act of October 3, 1972 (86 Stat. 762).

These persons traced to a common ancestor, Annie Grinter, a Delaware Indian listed on the 1868 Annuity Payroll; however, they are unable to prove they have a lineal ancestor on the 1906 Delaware per capita payment roll or eligible to be on that roll.

We recommend the appeals be denied and dismissed.

Sincerely yours,

Tribal Operations Officer

Secretary of the Interior
Bureau of Indian Affairs
Muskogee Area Office
Muskogee, Oklahoma

This is to notify you that I appeal the rejection of my application to share in the Delaware judgment funds from Indian Claims Commission Dockets 72 and 298.

Please refer to the appeal letter of Wanda Weeks for further information.

Brenda June Weeks
Sponsor Wanda June Weeks

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
MUSKOGEE AREA OFFICE
MUSKOGEE, OKLAHOMA 74401

CERTIFIED MAIL—RETURN RECEIPT REQUESTED—
ADDRESSEE ONLY

June 5, 1973

Wanda June Weeks For:
Brenda June Weeks
3200 S. W. 42
Oklahoma City, OK 73119

This letter is to officially notify you that your application to share in the Delaware judgment funds from Indian Claims Commission dockets 72 and 298 has been rejected. The Act of October 3, 1972 (86 Stat. 298) sets forth the requirements for eligibility. You were rejected for the following reason:

(1) You have not proven that you have a lineal ancestor whose name appears on the Delaware Indian per capita payroll approved by the Secretary of the Interior on April 20, 1906.

You may appeal or request reconsideration the rejection of your application to the Secretary of the Interior. If you decide to appeal, it is important for you to follow the instructions contained in this letter and those that are attached as an enclosure. The following is a summary of the instructions pertaining to appeals.

(1) Address your appeal to the Secretary of the Interior; in care of the Area Director, Bureau of Indian Affairs, Muskogee, Okla. 74401 Attention: Tribal Operations—Delaware.

(2) Your appeal letter must be received within 30 days after you receive this notice of rejection. (We have a record of the date you received this notice)

(3) Send any documents that support your eligibility. (See paragraph 42.5 of the attached regulations.

Additional time to obtain more evidence or other documents may be granted, but will be granted only when supported by adequate reason and justification.

Appeals will be forwarded to the Secretary of the Interior for a final decision. Those who appeal will be notified of the final decision by the Secretary.

Sincerely yours,

/s/ JACOB AHTONE
Jacob Ahtone
Tribal Operations Officer

May 1, 1973

Honorable Lloyd Meeds
Chairman, Subcommittee on Indian Affairs
Committee on Interior and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Meeds:

Thank you for your letter of March 27 on behalf of Mrs. Wanda Weeks concerning the distribution of Delaware judgment funds pursuant to the Act of October 2, 1972.

Section 2 of the Act authorized the Secretary of the Interior to prepare a roll of persons who meet the following requirements:

(a) They were born on or prior to and living on the date of the Act; and

(b) they are citizens of the United States; and

(c)(1) their name or the name of a lineal ancestor appears on the Delaware Indian per capita payroll approved by the Secretary on April 20, 1906, or

(2) their name or the name of a lineal ancestor is on or is eligible to be on the constructed base census roll as of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary.

In a memorandum to the Bureau of Indian Affairs dated February 17 the Assistant Solicitor, Division of Indian Affairs, Department of the Interior stated, in part:

"* * * In so determining the qualifications for payment, there is no indication in the legislative history that Congress concluded that the 1906 roll was complete and without need for additions while at the same time specifically recognizing the possible need for additions to the 1940 roll.

"Consequently, I believe it is legally proper to interpret the 1972 Act * * * that there should be included on the payment roll being prepared on the basis of the 1906 and 1943 rolls those persons, or descendants of such persons, who were qualified to be on either the 1906 or 1943 rolls but who are not actually named on either roll."

Both Mr. Sidney M. Carney, Area Director, Anadarko Area Office, and Mr. Thomas J. Ellison, Acting Area Director, Muskogee Area Office of the Bureau of Indian Affairs have been advised of the Assistant Solicitor's memorandum and are implementing this interpretation of the Act of October 3, 1972, in the preparation of the roll which will serve as the basis for distributing the judgment funds.

Because Mrs. Weeks shared in the distribution of the Delaware judgment funds pursuant to the Act of September 21, 1966, she should have received a letter of verification from the Muskogee Area Director. Please urge Mrs. Weeks to return this letter if she has not already done so. Regulations issued to govern the preparation of the roll did not require persons who applied for the 1968 Act to apply for enrollment under the Act of October 3, 1972. However, they are required to furnish current information as to their whereabouts. If Mrs. Weeks has any further questions concerning her enrollment, she should write directly to the Acting Area Director, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401.

Sincerely yours,

/s/ Raymond V. Butler
Acting Director, Office of
Community Services

Wanda Weeks
3200 S. W. 42
Oklahoma City, Okla. 73119

Secretary of the Interior
In care of Area Director
Bureau of Indian Affairs,
Muskogee, Oklahoma

This letter is to notify you that I appeal the rejection of my application to share in the Delaware judgment funds from Indian Claims Commission Dockets 72 and 298.

I was aware of the strict language of the law and I ask Congressman John Jarman to present an amendment to Congress to read "They are lineal descendants of Delaware Indians who were members of the Delaware Nation of Indians as constituted at the time of the treaty of October 3, 1818, and their name or the name of a lineal ancestor appears on any available census roll or any other record acceptable to the secretary." I was informed that an agreement had been reached by the Tribe and the Bureau of Indian Affairs to allow those Delawares who were ineligible under the strict language of the law to share in this distribution without an amendment to the law.

The treaty of 1854 comprised 557,955 acres, and the government realized $1,057,898.19 from the sale which amount was placed in the national fund. My Great-Grandmother Annie Grinter was a member of the Delaware Tribe of Indians at this time.

Public Law 92-456 provides "The Secretary of the Interior shall give a rejection notice within sixty days after receipt of an application if the applicant is ineligible for enrollment." On February 5, 1973 I took my application and my families to the Muskogee Area Office. We did not receive our rejection notice until June 7, 1973.

Below is a list of my close family, whose separate appeals are attached. They were approved on Docket 337.

Wanda June Weeks

Bessie B. Stock
George W. Grinter Jr.
George W. Grinter III
Robert Eugene Grinter
Eunice O. Johnson
Joyce Gail Denzer
Wallace Reed Hodge
Jewel Jenice Hodge
David Edward Hodge
Kevin Richard Denzer
Katherine E. Ware
Mary Ione Grinter
Dennis Eugene Stock
Kathy Ann Stock
Mary Jane Leiter
Kenneth Charles Martin
Scott Bly Leiter
Shari Carmel Leiter
Gary Alan Leiter
Vera F. Cox
Loyd Russell Vaughn
Robin Gale Cox
Debra Renae Cox
Clarence A. Weeks III
Steve Alan Weeks
Martin Alden Weeks
Brenda June Weeks
Michael Arley Weeks
Annie K. Langford
George Warren Byrd
Richard Lee Byrd
Robert W. Byrd
Michael Warren Byrd
Georgia Diane Garland
Jerrod L. Garland
Jason L. Garland
Arthur Conyne Cox III

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
MUSKOGEE AREA OFFICE
MUSKOGEE, OKLAHOMA 74401

PER CAPITA
Annie Grinter

April 3, 1970

Mrs. Wanda June Weeks
3200 Southwest 42
Oklahoma City, OK 73119

Dear Mrs. Weeks:

Applications to be enrolled to share in Delaware judgment money from docket 337 have been received for the following:

Wanda June Weeks
Clarence Adelbert Weeks III
Steve Alan Weeks
Martin Alden Weeks
Brenda June Weeks
Michael Arley Weeks

Each individual named above has been determined to be eligible to be enrolled to share in the distribution of the money from docket 337.

The money cannot be paid until sometime after the deadline date for filing applications, which is December 31, 1969, and until all the applications which we will receive have been processed and approved or disapproved, all appeals to the Secretary of the Interior from ineligibility notices have been decided, and the payment roll prepared and approved.

Please notify us of all changes of address. Please give the name of your tribe and application number when writing us.

Sincerely yours,

/s/ CLYDE BUSEY
Clyde Busey
Supervisory Claims Examiner

enclosures

BC—Wanda June Hodge; Clarence Adelbert Weeks III; Steve Alan Weeks; Martin Alden Weeks; Brenda June Weeks; Michael Arley Weeks

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
MUSKOGEE AREA OFFICE
MUSKOGEE, OKLAHOMA 74401

CERTIFIED MAIL—RETURN RECEIPT REQUESTED
ADDRESSEE ONLY

Wanda June Weeks
3200 S. W. 42
Oklahoma City, OK 73119

June 5, 1973

This letter is to officially notify you that your application to share in the Delaware judgment funds from Indian Claims Commission dockets 72 and 298 has been rejected. The Act of October 3, 1972 (86 Stat. 298) sets forth the requirements for eligibility. You were rejected for the following reason:

(1) You have not proven that you have a lineal ancestor whose name appears on the Delaware Indian per capita payroll approved by the Secretary of the Interior on April 20, 1906.

You may appeal or request reconsideration the rejection of your application to the Secretary of the Interior. If you decide to appeal, it is important for you to follow the instructions contained in this letter and those that are attached as an enclosure. The following is a summary of the instructions pertaining to appeals.

(1) Address your appeal to the Secretary of the Interior; in care of the Area Director, Bureau of Indian Affairs, Muskogee, Okla. 74401 Attention: Tribal Operations—Delaware.

(2) Your appeal letter must be received within 30 days after you receive this notice of rejection. (We have a record of the date you received this notice)

(3) Send any documents that support your eligibility. (See paragraph 42.5 of the attached regulations.

Additional time to obtain more evidence or other documents may be granted, but will be granted only when supported by adequate reason and justification.

Appeals will be forwarded to the Secretary of the Interior for a final decision. Those who appeal will be notified of the final decision by the Secretary.

Sincerely yours,

/s/ JACOB AHTONE
Jacob Ahtone
Tribal Operations Officer

Defendants Secretary and Delaware Tribal Business Committee's Exhibit 24. Resolution of Delaware Council. April 29, 1904 (Vol. XXIX of the Appeal Record).

Whereas, by an item contained in the Act of Congress approved on the 21st day of April, A. D., 1904, it was provided as follows:

> "The Secretary of the Treasury is authorized and directed to pay to the Delaware Tribe of Indians residing in the Cherokee Nation, as said tribe shall in Council direct, the sum of one hundred and fifty thousand dollars in full of all claims and demands of said tribe against the United States, and the same is hereby appropriated and made immediately available: Provided, That said sum shall be paid only after the tribal authorities, thereunto duly and specifically authorized by the tribe, shall have signed a writing stating that such payment is in full of all claims and demands of every name and nature of said Delaware Indians against the United States, which writing shall be subject to the approval of the President of the United States and shall have provided for the discontinuance of all actions pending in all courts wherein said Delaware Indians are plaintiff and the United States defendants."

and whereas the said Delaware Tribe of Indians, in order to duly consider said provision, and to take such action thereon as, after due deliberation, shall seem just and for their best interest, have met in General Council and discussed the same in its relations to their past history and present relations to the United States, make the following declaration of their position:

THEREFORE BE IT RESOLVED BY THE DELAWARE TRIBE OF INDIANS RESIDING IN THE CHEROKEE NATION IN GENERAL COUNCIL ASSEMBLED,

FIRST. That the Delaware Tribe of Indians residing in the Cherokee Nation consists of all Delaware Indians, now living, whose names appear upon a certain roll made by John G. Pratt, February 18, 1867, and all whose names were added thereto on or before May 8, 1867, which roll was known as the Delaware Register (there being originally nine hundred and eighty-five Delawares so registered), and all living descendants of such registered Delaware Indians.

SECOND. That "the tribal authorities" of the said Delaware Tribe of Indians consists of,

1st. A General Council, which is a mass meeting of the members of said Tribe called together by the representatives or the Business Committee of the Tribe.

2nd. The Business Committee, as elected by a vote of the people cast on February 1, 1895, under the direction of W. H. Simms, Acting Secretary, dated December 21, 1894, being George Bullette, Chairman, John Young, John Sarcoxie, Jr., Henry Armstrong, and John Sacondyne.

3rd. The representatives of the Delaware Tribe of Indians residing in the Cherokee Nation, who are duly authorized to act for the Council of said Tribe, and the Business Committee of said Tribe, being Richard C. Adams and John Bullette.

THIRD. The Delaware Indians through their tribal authorities thereunto duly and specifically authorized by said Delaware Indians do hereby accept and receive from the United States the sum of one hundred and fifty thousand dollars ($150,000.00) in full settlement and discharge of all claims, debts or demands of every name and nature which the said Delaware Tribe of Indians have against the

United States; and the Attorney General of the United States, in pursuance of the Act of Congress approved the 21st day of April, 1904, is hereby authorized and requested by proper motion to cause to be dismissed all actions or suits pending in any courts wherein the said Delaware Indians are plaintiffs and the United States are defendants, the said Delaware Indians hereby expressly consenting to such dismissal of such suits or actions.

FOURTH. We hereby authorize and empower our representatives, Richard C. Adams and John Bullette, and our Business Committee, or a majority thereof, to sign a writing statement the purpose of this resolution, and to file the same with the President of the United States, and to request and demand that a warrant be drawn in favor of the cashier of some National Bank, at the discretion of our representatives, and Business Committee, for the full amount of $150,000, the same to be deposited subject to the checks of Hon. Matthew S. Quay, unless he can not disburse the same to the Tribe, then to be subject to the checks of James Blair Shoenfelt, and that Hon. Matthew S. Quay be requested to make a per capita payment to the Delaware Indians in the manner hereinafter set forth, or if the said Hon. Matthew S. Quay shall not consent to make a per capita payment to the Delaware Indians then James Blair Shoenfelt be requested to make a per capita payment to the Delaware Indians so as to give to each man, woman and child whose names appear upon a certain roll, which is to be made by the Delaware Business Committee, an equal distribution of the money, after deducting therefrom the expenses incurred by the Delaware Business Committee in making such roll and after paying the Delaware Business Committee the sum of $5.00 per day each while they are actually engaged in making the pay-roll, and in defraying other expenses that might incur, and the sum of $2,000 is hereby appropriated which amount is to be placed to the credit of the Delaware Business Committee by our representatives in some national bank, to be subject to the checks of George Bullette, Chairman of the Business Committee, and whoever shall succeed him, the same to be used to defray the contingent expenses in covering the items herein named and such other matters as the Council hereafter shall direct and the Chairman of the Business Committee is required to report at the next Council and each Council hereafter of the Delaware Indians the amount they expended and the amount yet on hand, and the further sum of $5,000 is hereby appropriated with which to pay such members of the Delaware Tribe of Indians residing in the Cherokee Nation whose names may be added to the pay-roll at the time of the payment, and such portion of said sum as shall remain undistributed shall become a part of the money appropriated for the use of the Business Committee under the direction of the Delaware Council, and shall be accounted for in the manner hereinbefore set forth.

FIFTH. The roll shall be made as follows:

To contain the name of each and every Delaware Indian and the descendants of each and every Delaware Indian, living at this time, and all who may be born before the payment is made, who become citizens of the Cherokee Nation by reason of a certain agreement entered into between the Delaware Tribe of Indians and the Cherokee Nation, dated April 6, 1867. The payment shall be made to the adult member of the Tribe whose names appear upon this roll; to the husband and father, if he be a Delaware Indian, for his wife and minor children; to the mother for her minor children if the father be dead, or if he be not a Delaware Indian, and in case of a minor child having neither father or mother of Delaware blood, then the payment shall be made to the guardian appointed by law.

SIXTH. The Business Committee is hereby directed to make the pay-roll in quadruplicate, and to deliver them to the party making the payment, which roll shall be signed

by the person receiving the money, in the presence of the Business Committee, who shall certify that they were present when the payment was made, and witnessed the signatures of the parties whose names appeared thereon, and shall also certify as to how much money was left over from said payment to be covered back as above set forth to the contingent fund of said Tribe.

SEVENTH. One copy of the roll shall then be filed with the United States Indian Agent for the Union Agency at Muskogee, Indian Territory, one copy delivered to Honorable Matthew S. Quay; one copy to be delivered to Richard C. Adams; and one copy forwarded to the Commissioner of Indian Affairs for the files of his offce.

EIGHTH. The Business Committee while in Washington shall investigate into the question as to the character and extent of the services that have been performed and the money expended in the interest of the Delaware Tribe of Indians by our representatives during the time they have been employed by the Delaware Tribe of Indians, and the contracts they have made with attorneys to assist them, and shall make a full report in writing and in person to a General Council of this tribe to be called by the Chairman of said Business Committee for that purpose before a payment shall be made to the Delaware Tribe of Indians.

NINTH. BE IT FURTHER RESOLVED, That the Chairman of this Council shall deliver five copies of this resolution to our representative, Richard C. Adams, who is hereby instructed to file one copy with the President of the United States; one copy with Hon. Matthew S. Quay; one copy with the Secretary of the Treasury; one copy with James Blair Shoenfelt, and to keep one copy himself, and Richard C. Adams and John Bullette, our representatives, and such members of the Business Committee as will accompany them to Washington are hereby authorized and required to sign such writings as our tribal authorities, and in the

name of the Delaware Tribe of Indians, and do such things as will be necessary and proper to do in the premises, the same as we and each and all of us could do if personally present at the doing thereof.

Done at Dewey, Indian Territory, this 29th day of April, A.D., 1904.

JOHN H. SACONDYNE,
Chairman.

J. M. MCCRACKEN,
Sec'y of Council.

Excerpts from Defendants Secretary's and Delaware Tribal Business Committee's Exhibit 18. Certified Copies of Material Used in Determining Eligibility of Individuals (Vol. XXIX of the Appeal Record).

RICHARD C. ADAMS
REPRESENTING DELAWARE INDIANS
BOND BUILDING
WASHINGTON, D.C.

January 25, 1905

The Honorable Secretary of the Interior,
Washington, D.C.

Sir:—

The act of the general council assembled of the Delaware Indians on the 12th and 13th of October, 1904, at Dewey, Indian Territory, provided that the United States Indian Agent for the Union Agency make a roll of the Delaware Indians residing in the Cherokee Nation, with the aid and assistance of the various departments of the Government, providing that the Delaware Council or the Delaware Business Committee shall have a right to inspect said roll before payment is made.

At the request of and on behalf of the Delaware Indians, I respectfully urge that this roll be made at as early a date as possible; also, that the question of the rights of the Delawares, known as the Kansas Delawares, be determined, as was suggested by the Attorney-General, by the Comptroller of the Treasury at an early date so that the Agent will know whether to place their names upon this roll or not. The persons we call Kansas Delawares are Delaware Indians who remained in Kansas in 1867; who did not participate in the agreement with the Cherokee Nation; who became citizens of the United States and drew out their part of the funds, and took their part of the allotments in

Kansas, who afterwards sold their lands in Kansas and purchased citizenship in the Cherokee Nation independent of the action of the other class of Delaware Indians.

The Delaware Indians at the various councils held, in deliberating over the appropriation of $150,000.00, contended that the Kansas Delawares, having settled in full in Kansas, had no right to participate in this money, (I believe there would be about sixty or seventy of this class of Delaware Indians), while, on the other hand, the Kansas Delawares contended that they were a part of the Delaware Tribe of Indians residing in the Cherokee Nation, and that these various claims arose from treaty stipulations in which their interests with the other Delawares were identical.

The answer of the majority of the council to this was that, while they may be Delaware Indians residing in the Cherokee Nation, they had settled with the Government and with the Delawares in full in Kansas, and separated themselves from the rest of the Tribe.

I respectfully request that these questions be determined immediately, and that the Agent be instructed to prepare a roll, and that the payment be made by check by the Treasury Department, the checks to be sent to Agent Shoenfelt and by him dispersed to the Delaware Indians at Dewey, Nowata and Vinita.

Please answer this communication to Dewey, Indian Territory. I start for the West today, and would be glad to advise the Delawares what they might expect.

I am,

Yours respectfully,

/s/ RICHARD C. ADAMS

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON, MARCH 22, 1905

U.S. Indian Agent,
Union Agency, I.T.

Sir:

The Indian Appropriation Act of April 21, 1904 (33 Stats., 222), contains the following provisions:

> "The Secretary of the Treasury is authorized and directed to pay to the Delaware tribe of Indians residing in the Cherokee Nation, as said tribe shall in council direct, the sum of one hundred and fifty thousand dollars in full of all claims and demands of said tribe against the United States, and the same is hereby appropriated and made immediately available: *Provided,* That said sum shall be paid only after the tribal authorities, thereunto duly and specifically authorized by the tribe, shall have signed a writing stating that such payment is in full of all claims and demands of every name and nature of said Delaware Indians against the United States, which writing shall be subject to the approval of the President of the United States and shall have provided for the discontinuance of all actions pending in all courts wherein said Delaware Indians are plaintiff and the United States defendants."

All of the conditions prescribed in the foregoing having been complied with, and the sum of $37,200 having been disbursed for attorneys' fees by authority of the tribal council, it only remains now to pay over the balance, amounting to $112,800, to the tribe in the manner directed by said council.

On October 13, 1904, the Delaware Indians in council adopted a resolution, which has been approved by the

President, as required by law, and of which the following is a part:

> "And we do hereby authorize and empower the United States Indian Agent, for the Union Agency, to make a roll of the Delaware Indians residing in the Cherokee Nation, with aid and assistance of the various departments of the government, and to pay to the Delaware Indians per capita the full amount of the money appropriated by the Act of Congress aforesaid, provided that the Delaware Business Committee of the Delaware Council shall have a right to inspect said roll before payment is made."

In accordance with his resolution, the duty of preparing a roll and distributing the money to the Indians per capita is hereby devolved upon you. As to who are entitled to share in the payment, the Comptroller of the Treasury, in a decision rendered on the 1st instant, says:

> "From the language of the act and conditions therein imposed, I think it clear that the appropriation of $150,000 was made for, and payable only to the Delaware *tribe* of Indians, as said tribe by its council direct, and that the Delaware Indians who, under the provisions of Articles III and IX of the treaty of July 4, 1866, *supra,* elected to dissolve their tribal relations, and became citizens of the United States are not legally entitled to be enrolled for participation in the distribution of said sum."

The Comptroller then goes on to say that the New York Indians who were enrolled with the Delaware tribe that removed from Kansas to the Indian Territory as a part of said tribe, although not members thereof by blood or adoption, do not come within the provisions of the act above quoted, and concludes his opinion in the following language:

> "I therefore have the honor to advise you that the 'Delaware Tribe of Indians residing in the Cherokee Nation' within the meaning of the last named act, con-

sists only of the members of the Delaware tribe by blood or adoption who, under the treaty of July 4, 1866, elected to preserve their tribal relations and who entered into and carried out the agreement with the Cherokees of April 8, 1867, and their descendants."

I enclose, for your information, a copy of the aforesaid opinion of the Comptroller, and also a copy of a decision rendered by the United States Attorney General on December 31, 1904, touching the various quotations of law involved in the execution of the act. With these papers as a guide, you are directed to prepare a roll containing the name and a brief description of each Indian entitled to share in the payment, and submit the same for examination by this Office and the approval of the Department. Said roll must be based upon the records of the Five Civilized Tribes Commission, and inspected by the Delaware Business Committee as provided for in the resolution adopted by the tribal council. As evidence that the roll has been inspected as stated, it should contain a certificate signed by two or more duly authorized members of the Business Committee, to that effect.

When your roll has been received and approved it will be returned to you and the money will be placed to your credit. You will then proceed with the disbursement under the rules prescribed for regular annuity payments in articles 7 to 24, section 324 of Office Regulations, except that the shares of orphan minors and any persons who may die between the closing of the roll and the payment will be paid to guardians and administrators appointed by a court of competent jurisdiction. The letters of guardianship and administration in these cases, or certified copies thereof, must be filed with the voucher as evidence of proper payment.

Very respectfully,

/s/ L. F. Larrabee
Acting Commissioner

Approved March 27, 1905.
E. A. Hitchcock
Secretary of the Interior

Defendants Secretary's and Delaware Tribal Business Committee's Exhibit 25 (Vol. XXIX of the Appeal Record).

Adopted September 7, 1958

Resolution Establishing By-Laws Under Which the Delaware Tribal Business Committee Shall Speak and Act in Behalf of the Delaware Tribes of Indians.

Whereas, it is expensive and inconvenient for the individual members of the Delaware Tribe to meet in General Council for the transaction of all tribal business; said tribal business has heretofore been administered through an administrative body designated The Delaware Tribal Business Committee,

Whereas, it is the intent and desire of the individual members of the Delaware Tribe, 21 years of age and over, to define the manner under which the Delaware Tribal Business Committee shall represent, speak and act for the individual members of the Delaware Tribe on matters affecting the properties and general business of the Tribe,

Whereas, the Delaware Tribe has not heretofore through means of written documentation defined the mechanics under which said Committe shall be elected and function,

Now Be It Therefore Resolved That:

Section 1 (A). The Delaware Tribal Business Committee shall consist of a Chairman, Vice-Chairman, Secretary-Treasurer, and two members, all of whom shall be elected by secret ballot and who shall serve for a period of four years.

(B) Three members of the Delaware Tribal Business Committee shall constitute a quorum for the official transaction of tribal business.

Section 2. No person shall be a candidate for membership in the Delaware Tribal Business Committee unless he shall

be a member of the Delaware Tribe by blood and shall be at least 25 years of age.

Section 3 (A). The first election of a Tribal Business Committee under this Resolution shall be called and supervised by the Area Director of the Muskogee Area Office or his authorized representative in accordance with election procedures outlined by him. Thereafter, elections shall be held every four years in July prior to the expiration of the terms of office of the members of the Delaware Business Committee. The date and place shall be designated by the Delaware Tribal Business Committee, and thirty (30) days prior to the election, public notice shall be given. The terms of office of members of the Delaware Tribal Business Committee shall be for four years, or until their successors are elected, qualified and installed.

(B) Regular elections shall be held every fourth year commencing from the year 1958 A.D. Nominations shall be made from the floor. Election shall be by secret ballot, a plurality vote being necessary to elect. The newly elected officers shall be installed immediately upon their election.

(C) If the Delaware Tribal Business Committee shall fail to give appropriate notice of the election, or in case a regular election shall not be held as in Section 3 of this Resolution, the Commissioner of Indian Affairs or his authorized representative shall call such an election and shall give thirty (30) days' notice, setting the time and place of the election.

Section 4. Vacancies in any elective office shall be filled at any regular or special meeting of the Delaware General Council, providing that proper notice has been given.

Section 5. . . . The Delaware Tribal Business Committee is hereby empowered to appoint subordinate committees and representatives; to transact business of the Delaware Tribe, including the management or disposition of tribal

property and the expenditure of tribal funds; and such additional business of the Tribe as the Delaware General Council may see fit to delegate to the Delaware Tribal Business Committee from time to time by appropriate resolution; provided, however, that any ordinances passed by the Delaware Tribal Business Committee governing membership, future membership or the loss of membership, shall be subject to the approval of the Delaware General Council, and, so long as the affairs of the Delaware Tribe are under the general supervision of the Federal Government, of the Commissioner of Indian Affairs or his authorized representative. . . .

Section 5 (A). A Grievance Committee, consisting of five persons of Delaware Indian blood, shall be elected by the General Council, and shall not include any members of the Delaware Tribal Business Committee. The term of office of the Grievance Committee shall be for four years and the members shall be elected at the same time and in the same manner as that provided for the election of the members of the Delaware Tribal Business Committee.

(B) The Grievance Committee shall investigate complaints of misconduct or other acts of the members of the Delaware Tribal Business Committee and upon a proper showing shall request the Chairman to call a special meeting of the Delaware General Council to act upon such complaints. In the event the Chairman refuses or fails to call such a meeting the Grievance Committee shall advise the Commissioner of Indian Affairs or his authorized representative, who shall call the special meeting of the Delaware General Council for the purpose of hearing and acting upon such complaints. Such Council shall have power, by a majority vote, after giving the accused a hearing, to clear him of the charges; or to remove him from office, if guilty, and proceed to elect a successor, except if a member of the Delaware Tribal Business Committee fails to or refuses to attend two regular meetings in succession unless

excused due to illness or other causes for which he cannot be held responsible, or shall be convicted of a felony, or a misdemeanor involving moral integrity, his office shall be forfeited automatically, and a special election shall be called by the Chairman of the Delaware Tribal Business Committee for his replacement, in accordance with Section 4 of this Resolution.

Section 6. It shall be the duty of the Chairman of the Delaware Tribal Business Committee to preside at all meetings and perform all duties appertaining to the office. He shall exercise all authorities delegated to him and he shall be entitled to a vote on all questions.

Section 7. In the absence of the Chairman of the Delaware Tribal Business Committee, the Vice-Chairman shall perform the duties of the Chairman, assuming all the privileges, duties and responsibilities of the Chairman.

Section 8 (A). The Secretary-Treasurer shall correctly record all proceedings of all meetings and shall forward copies of the minutes of all meetings to the Area Director and to the Commissioner of Indian Affairs. He shall be responsible for the prompt and efficient handling of all correspondence pertaining to the Business of the Council. He shall make out the order of business for the Chairman; shall notify all committees of their appointments; shall have custody of the records and all papers of the Council which records and papers shall be open to inspection at any reasonable time, in his presence, by any members of the Council desiring to review them. He shall keep a correct list of all members of the Council, shall authenticate all accounts or orders of the Council, and in the absence of the Chairman and the Vice Chairman, shall call the meeting to order until a Chairman Pro-Tem is selected. He shall render a written report at the annual meeting and at the expiration of his term of office, records and all papers in his possession shall be turned over to his successor. He shall issue notices of all meeting and conduct all general correspondence, as directed by the General Council or the Tribal Business Committee. He shall keep all tribal monies entrusted to his care in a special account and all disbursements therefrom should be made by check. He shall keep an accurate account of receipts and disbursements of all such tribal monies and make appropriate reports to the Delaware Tribal Business Committee and to the Delaware General Council at its annual meetings. The accounts and records of the Delaware Tribal Business Committee and the General Council shall be open at all times for inspection and audit by the Commissioner of Indian Affairs or his authorized representative.

(B) The Secretary-Treasurer shall file a surety bond satisfactory to the Tribal Business Committee and to the Commissioner of Indian Affairs or his authorized representative. The cost of such bond shall be paid from tribal funds.

Section 9. Special meetings of the Delaware General Council may be called at the discretion of the Chairman, and shall be called by him at the request in writing of the majority of the Tribal Business Committee, or by a written request of thirty per cent of the members of the General Council.

Section 10. The regular meetings of the Delaware Tribal Business Committee shall be held at a place and time to be determined by the Chairman, with proper notice to the members of the Committee during the months of January, April, July and October unless otherwise provided by Resolution.

Section 11. Special meetings of the Delaware Tribal Business Committee may be called by the Chairman at his discretion and shall be called by him upon the written request of a majority of the Business Committee.

Section 12. All meetings of the Delaware General Council and the Delaware Tribal Business Committee shall be conducted in accordance with Robert's Rules of Order.

Section 13. This Resolution may be amended by a majority vote of the qualified voters of the Delaware Tribe of Indians of Delaware blood at an election called for the purpose by the Delaware Tribal Business Committee. It shall be the duty of the Chairman of the Delaware Tribal Business Committee to call such an election or referendum at the request of a majority of the Delaware Tribal Business Committee, or upon presentation of a petition signed by at least thirty per cent of the qualified voters, members of the Delaware Tribe: PROVIDED that not less than thirty days' notice of such meeting and proposed amendment shall be given to the members of the Tribe directly by mail, if feasible, and by appropriate publication throughout the communities in which the Tribal members reside.

The foregoing resolution was duly adopted this 7 day of Sept., 1958.

/s/ H. L. MCCRACKEN
Chairman, Delaware Tribal Business Committee

/s/ BRUCE M. TOWNSEND
Vice-Chairman, Delaware Tribal Business Committee

This is to certify that there were approximately 350 of the adult members of the Delaware Tribe at the above General Council meeting; that there were 2 opposing votes and a few not voting on the above resolution, and the resolution was therefore adopted, . . . FOR, 132 votes.

/s/ ILLEGIBLE
Area Director and Presiding Officer

/s/ MARIE L. WADLEY
Tribal Affairs Officer and Secretary Pro-Tem
Approval:

/s/ JAMES E. OFFICE
Commissioner, Bureau of Indian Affairs

May 31, 1962

SUPREME COURT OF THE UNITED STATES

Nos. 75-1301, 75-1335 and 75-1495

DELAWARE TRIBAL BUSINESS COMMITTEE, et al., *Appellants,*

v.

WANDA JUNE WEEKS, et al.

ABSENTEE DELAWARE TRIBE OF OKLAHOMA BUSINESS COMMITTEE, et al., *Appellants,*

v.

WANDA JUNE WEEKS, et al.

THOMAS A. KLEPPE, SECRETARY OF THE INTERIOR, et al., *Appellants,*

v.

WANDA JUNE WEEKS, et al.

APPEALS from the United States District Court for the Western District of Oklahoma.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of one and one-half hours is allotted for oral argument. In case No. 75-1335 the parties are invited to address particularly questions 1, 4 and 9 presented by the jurisdictional statement.

June 14, 1976